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ADMIRALTY LAW, CANADA

THE RULES, 1893, ANNOTATED,

WITH

FORMS, TABLES OF FEES, AND STATUTES,

AND A TREATISE ON THE MATTERS SUBJECT TO THE

JURISDICTION OF ADMIRALTY COURTS IN CANADA.

BY

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and other works.*

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To

THE HONOURABLE SIR JOHN S. D. THOMPSON, K.C.M.G., Q.C.

MINISTER OF JUSTICE FOR CANADA

By WHOM

THE NEW SYSTEM OF ADMIRALTY COURTS, UNDER THE IMPERIAL ACT,
HAS BEEN ESTABLISHED IN CANADA.

This Work

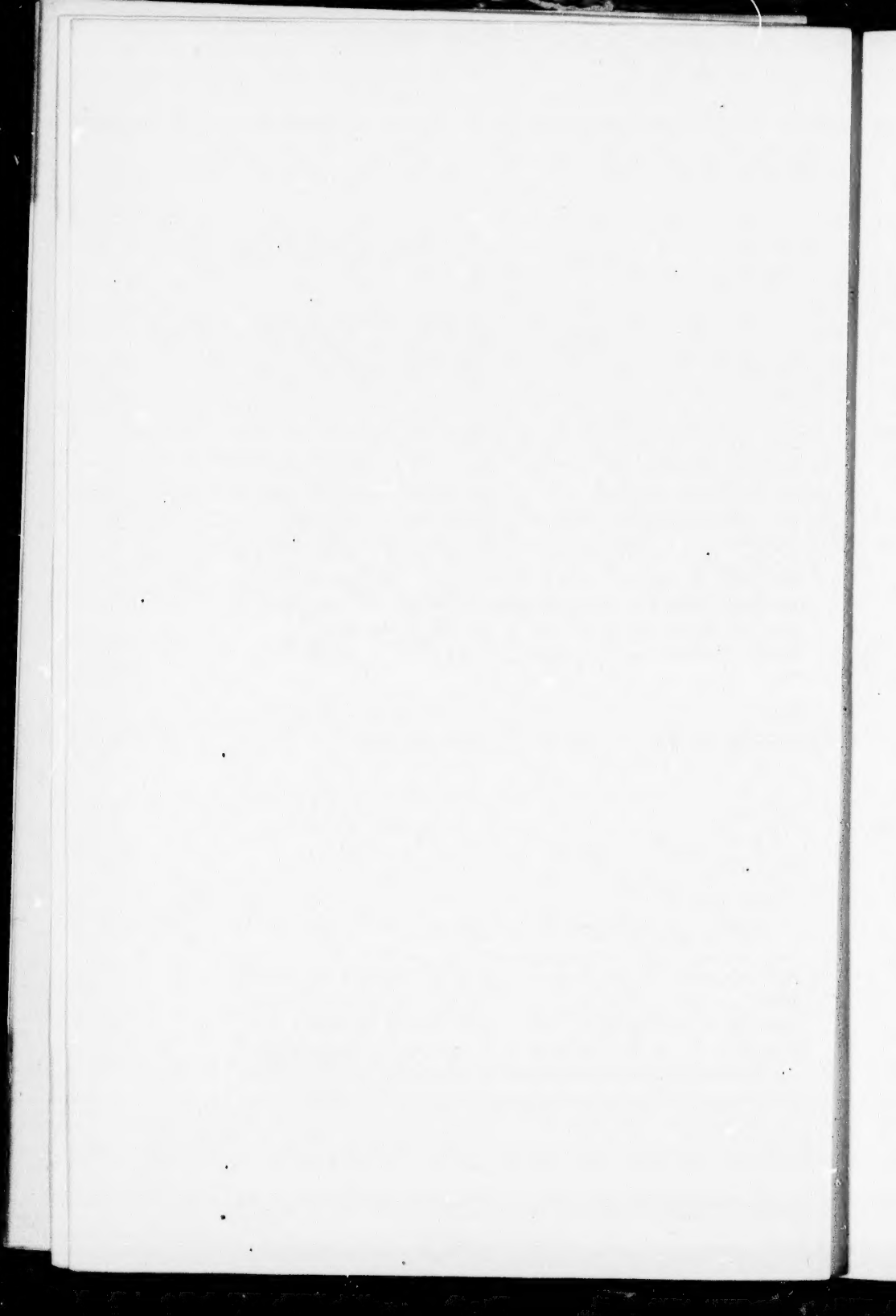
IS,

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BY

THE AUTHOR.



ADDENDA

TO

HOWELL'S ADMIRALTY PRACTICE, CAN.

After *Howell's Admiralty Practice* had been sent to the bindery the following important official circular was issued, and he desires to add it to the work, to be read or referred to in connection with the pages on Salvage and Wrecking Privileges; striking out, in accordance therewith, the words "*the Welland Canal*," on page 226; and substituting "July 17," for "July 28," on page 227.

DEPARTMENT OF TRADE AND COMMERCE.

OTTAWA, November 7th, 1895.

RE RECIPROCAL WRECKING.

I am desired by the Honourable the Minister of Trade and Commerce to direct the attention of all persons interested to the following:—

At the Conference held at Washington in February, 1892, between delegates of the Canadian Government and representatives of the United States Government, among other things discussed was the subject of reciprocal wrecking privileges in waters conterminous to Canada and the United States, and it was then agreed that the subject should be dealt with by legislation on the part of Canada, and by such instructions from the Treasury Department of the United States as might be necessary to give to the Act of Congress on the subject such liberal construction as would include permission for all towing necessary and incidental to wrecking and salvage, and the relaxation of

customs laws in so far as might be necessary to make the reciprocal arrangement effective.—*Vide* Sessional Papers No. 52, 1893.

In pursuance of this agreement the Parliament of Canada at its next ensuing session passed the Act 55-56 Vic. cap. 4, intituled "An Act respecting aid by United States Wreckers in Canadian Waters," and upon being apprised that the Act of Congress approved June 19th, 1878, entitled "An Act to aid vessels wrecked or disabled in waters contiguous to the United States and the Dominion of Canada," as amended by an Act approved May 24th, 1890, had been further amended by an Act approved March 3rd, 1893, His Excellency the Governor-General issued his Proclamation on May 17th, 1893, bringing the said Act 55-56 Vic. cap. 4, into force on and after the first day of June, 1893, which said Proclamation was communicated to the United States Government by Her Majesty's Ambassador at Washington on the 2nd day of June, 1893, whereupon the President of the United States issued on the 17th day of July, 1893, his Proclamation declaring the Act of Congress above referred to to be from that time in full force and effect.

Under date of the 5th October, 1893, the Secretary of the Treasury of the United States issued a circular letter of instructions relative to the construction to be given to the Act of Congress and relative to all necessary towing incidental to any wrecking or salving, and to such relaxation of United States customs laws as appeared necessary, in order to give full effect to reciprocal wrecking, &c., in the waters contiguous to the two countries.

Appended are copies of the Act 55-56 Vic. cap. 4, of His Excellency's Proclamation of the 17th May last, of the President's Proclamation of the 17th July last, which embodies the Act of Congress as amended, and of the United States Treasury Circular of the 5th October, all above referred to.

W. G. PARMELEE,
Deputy Minister.

ACT 55-56 VICT. CAP. 4.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. United States vessels and wrecking appliances may save any property wrecked, and may render aid and assistance to any vessels wrecked, disabled or in distress, in the waters of Canada contiguous to the United States.

2. Aid and assistance include all necessary towing incident thereto.

Nothing in the customs or coasting laws of Canada shall restrict the salving operations of such vessels or wrecking appliances.

4. This Act shall come into force from and after a date to be named in a proclamation by the Governor-General, which proclamation may be issued when the Governor in Council is advised that the privilege of salving any property wrecked, and of aiding any vessel wrecked, disabled or in distress, in United States waters contiguous to Canada will be extended to Canadian vessels and wrecking appliances to the extent to which such privilege is granted by this Act to the United States vessels and wrecking appliances.

5. This Act shall cease to be in force from and after a date to be named in a proclamation to be issued by the Governor-General to the effect that the said reciprocal privilege has been withdrawn, revoked or rendered inoperative with respect to Canadian vessels or wrecking appliances in United States waters contiguous to Canada.

[Extract from THE CANADA GAZETTE of Saturday, May 27, 1893.]

PROCLAMATION.

[L. S.] DERBY.

CANADA.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

To all to whom these presents shall come, or whom the same may in any wise concern,—Greeting :

A PROCLAMATION.

E. L. NEWCOMBE,

Deputy of the Minister of Justice, Canada.

Whereas it is in and by a certain Act of Parliament of Canada, passed in the session thereof holden in the fifty-fifth and fifty-sixth years of Our Reign, chaptered four, and intituled "An Act respecting aid by United States wreckers in Canadian waters," amongst other things in effect enacted, that the said Act shall come into force from and after a date to be named in a proclamation by the Governor-General, which proclamation may be issued when the Governor in Council is advised that the privilege of salving any property wrecked and of aiding any vessels wrecked, disabled or in distress in United States waters contiguous to Canada will be extended to Canadian vessels and wrecking appliances to the extent to which such privilege is granted by the said Act to United States vessels and wrecking appliances ;

And whereas Our Governor in Council is advised that the privilege thus referred to will now be extended to Canadian vessels and wrecking appliances to the extent defined in the said enactment,—

Now Know Ye, that by and with the advice of Our Privy Council for Canada, We have thought fit to proclaim and declare, and We do hereby proclaim and declare that the said Act hereinbefore in part recited, intituled "An Act respecting aid by United States wreckers in Canadian waters," shall come into and be in force on and after the first day of June in this present year of our Lord.

Of all which Our loving subjects and all others whom these presents may concern, are hereby required to take notice and to govern themselves accordingly.

In testimony whereof, We have caused these Our letters to be made patent and the Great Seal of Canada to be hereunto affixed. Witness, Our Right Trusty and Well-beloved the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, in the County of Lancaster, in the Peerage of the United Kingdom; Knight Grand Cross of Our Most Honourable Order of the Bath; now Earl of Derby, &c., Governor-General of Canada.

At Our Government House, in Our City of Ottawa, this seventeenth day of May, in the year of Our Lord one thousand eight hundred and ninety-three, and in the fifty-sixth year of Our Reign.

By Command,

JOHN COSTIGAN,

Secretary of State.

PROCLAMATION

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

Whereas, an Act of Congress amendatory of an Act in relation to aiding vessels wrecked or disabled in the waters conterminous to the United States and the Dominion of Canada was approved May 24, 1890, the said Act being in the following words:—

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that an Act entitled ‘An Act to aid vessels wrecked or disabled in the waters conterminous to the United States and the Dominion of Canada,’ approved June nineteenth, eighteen hundred and seventy-eight, be, and the same is hereby, amended so that the same will read as follows:—

“That Canadian vessels and wrecking appurtenances may render aid and assistance to Canadian or other vessels and property wrecked, disabled or in distress in the waters of the United States contiguous to the Dominion of Canada: Provided, that this Act shall not take effect until proclamation by the President of the United States that the privilege of aiding American or other vessels and property wrecked, disabled or in distress in Canadian waters contiguous to the United States has been extended by the Government of the Dominion of Canada to American vessels and wrecking appliances of all descriptions. This Act shall be construed to apply to the Welland Canal, the canal and improvement of the waters between Lake Erie and Lake Huron, to the waters of Saint Mary’s River and Canal: And provided further, that this Act shall cease to be in force from and after the date of the proclamation of the

President of the United States to the effect that said reciprocal privilege has been withdrawn, revoked, or rendered inoperative by the said Government of the Dominion of Canada ;”

“ And whereas an Act of Congress making appropriation for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-four, and for other purposes, approved March 3, 1893, further amended the Act of May 24, 1890, as follows :—

“ That an Act approved May twenty-fourth, eighteen hundred and ninety, entitled “ An Act to amend an Act entitled ‘ An Act to aid vessels wrecked or disabled in waters conterminous to the United States and the Dominion of Canada, ’ approved June nineteenth, eighteen hundred and seventy-eight, be, and is hereby amended by striking out the words, ‘ the Welland Canal. ’ ”

And whereas, by an Order in Council dated May 17, 1893, the Government of the Dominion of Canada has proclaimed an Act entitled “ An Act respecting aid by United States wreckers in Canadian waters, ” to take effect June 1, 1893, said Act read as follows :—

“ Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

“ 1. United States vessels and wrecking appliances may save any property wrecked, and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters of Canada contiguous to the United States.

“ 2. Aid and assistance include all necessary towing incident thereto.

“ 3. Nothing in the customs or coasting laws of Canada shall restrict the salving operations of such vessels or wrecking appliances.

"4. This Act shall come into force from and after a date to be named in a proclamation by the Governor-General, which proclamation may be issued when the Governor in Council is advised that the privilege of salvaging any property wrecked, or of aiding any vessel wrecked, disabled or in distress, in United States waters contiguous to Canada, will be extended to Canadian vessels and wrecking appliances to the extent to which such privilege is granted by this Act to United States vessels and wrecking appliances.

"5. This Act shall cease to be in force from and after a date to be named in a proclamation to be issued by the Governor-General to the effect that the said reciprocal privilege has been withdrawn, revoked or rendered inoperative with respect to Canadian vessels or wrecking appliances in United States waters contiguous to Canada:"

And whereas said proclamation of the Governor-General of Canada was communicated to this Government by Her Britannic Majesty's Ambassador on the 2nd of June last:—

Now therefore, being thus satisfied that the privilege of aiding American or other vessels and property wrecked disabled or in distress, in Canadian waters contiguous to the United States has been extended by the Government of the Dominion of Canada to American vessels and wrecking appliances of all descriptions, I, GROVER CLEVELAND, President of the United States of America, in virtue of the authority conferred upon me by the aforesaid Act of Congress, approved May 24, 1890, do proclaim that the condition specified in the legislation of Congress aforesaid now exists and is fulfilled, and that the provisions of said Act of May 24, 1890, whereby Canadian vessels and wrecking appliances may render aid and assistance to Canadian and other vessels and property wrecked, disabled or in distress, in the waters of the United States contiguous to

the Dominion of Canada, including the canal and improvement of the waters between Lake Erie and Lake Huron and the waters of the Saint Mary's River and Canal, are now in full force and effect.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States of America to be hereunto affixed.

Done at the City of Washington this seventeenth day of July, in the year of our Lord one thousand (SEAL) eight hundred and ninety-three, and of the independence of the United States the one hundred and eighteenth.

(Signed) GROVER CLEVELAND.

By the President:

(Signed) W. Q. GRESHAM,
Secretary of State.

RECIPROCITY OF WRECKING BETWEEN THE
UNITED STATES AND CANADA.

1893. Department No. 154. Bureau of Navigation.

TREASURY DEPARTMENT,

WASHINGTON, D.C., Oct. 5th, 1893.

To Collectors of Customs and others:

The attention of collectors and other officers of the customs upon the northern frontiers of the United States is invited to the President's proclamation, dated July 17, 1893, relative to reciprocity of Wrecking between the United States and Canada.

The Acting Secretary of State, under date of the 30th ultimo, recommends that further regulations regarding the matter be promulgated by this department, and states that during the visit of the Canadian Commissioners to Washington in October last the subject of reciprocal privileges in wrecking was under consideration, and that a declaration was then made on the part of the Government of the United States that under the Act of Congress approved May 24, 1890, relating to vessels wrecked or disabled in the waters conterminous to the United States and Canada, *the aid and assistance provided for in said Act includes all necessary towing incident to such aid and assistance*, and that nothing in the coasting or customs laws of this country restricts the salving operations of such vessels and their appliances.

The proclamation and the Act of May 24, 1890, on which it was based, are embodied in this Department's Circular No. 114, dated July 28, 1893, and should be construed and observed by all customs officers in such a

manner as to give due effect to the declaration aforesaid, in the case of Canadian vessels and wrecking appliances rendering aid and assistance to Canadian and other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to the Dominion of Canada, including the canal and improvement of the waters between Lake Erie and Lake Huron and the waters of the St. Mary's River and Canal. In case of doubt as to the action which should be taken in any case, the Department will give special instructions.

Similar regulations have been made by the Canadian Government.

(Signed)

C. S. HAMLIN,
Acting Secretary.

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PREFACE.

THE coming into force of "The Admiralty Act, 1891," (Canada), conferring jurisdiction throughout Canada and its waters, *tidal and non-tidal*, and of the General Rules for regulating the practice thereunder, published in the *Canada Gazette* June 10th, 1893, marking a new era in the administration of maritime law and the exercise of Admiralty jurisdiction in the Dominion,—suggested the collecting together with those rules, of such statutes, Imperial and Canadian, as are material, and also the leading decisions of the House of Lords, the Privy Council, the High Court of Admiralty, the Admiralty Division of the High Court of Justice, England, and of the Supreme and Exchequer Courts of Canada, relating to the jurisdiction and practice in question. A further justification would, it was thought, be found for such a publication at the present time in the circumstance that the current of judicial decision has recently been changed by the judgments of courts of last resort as to maritime liens in certain cases, such as towage, necessities, and ship-master's disbursements and, as to the last named, the subsequent legislation thereon; and also in the coming into force this year of the recent arrangement for reciprocal wrecking and salvage privileges in the waters of the United States and Canada, the legislation and proclamations regarding which are set forth in Part III.

With a view to condensation, the references have, with few exceptions, been confined to cases in the Admiralty or Vice-Admiralty or Maritime Courts, and decisions on appeal therefrom, omitting decisions of the courts of common law upon questions relating to shipping, not hitherto held to be within the jurisdiction of Admiralty Courts.

The high authority of decisions of the learned judges who have presided in the Quebec, Nova Scotia, and other

Vice-Admiralty Courts, and Courts of Vice-Admiralty jurisdiction in the several provinces, has led to the citing of many of those decisions upon important questions. Those courts, however, as courts of equal rank were not, excepting by what is described as "the comity among judges": *The Vera Cruz*, 9 P. D. 96, at p. 98, bound to abide by the decisions of each other; and therefore decisions of the Exchequer Court itself, or of the Supreme Court, or of the Appellate Courts in England, have been selected necessarily to the exclusion, in many instances, of those of the inferior courts involving the same questions.

In all cases in which the provisions of Imperial statutes are introduced or re-enacted in a colony, it becomes necessary to introduce along with them the decisions of superior courts, by which constructions have been placed upon them, and also works of authority illustrating such statutes. In the present work the author has found it necessary constantly to refer to the practice of the Admiralty Division of the High Court of Justice in England, and he desires to acknowledge the great assistance he has received from several works of acknowledged authority, and to some of which he has made frequent reference in the volume, especially to Williams & Bruce's Admiralty Practice, and Roscoe's Admiralty Practice; and also to other works of recognized authority upon the same subject.

The author trusts that the work, though far from perfect, may be found a useful compendium of the law and practice upon the several matters treated of in its pages, and as such he respectfully offers it to the legal profession of the Dominion of Canada.

TORONTO, October, 1893.

A. HOWELL.

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ABBREVIATIONS.

| | |
|--------------------------|--|
| R.S.C..... | The Revised Statutes of Canada, 1886. |
| C.C.A.A..... | The Colonial Courts of Admiralty Act, 1890. |
| A.C.Act..... | The Admiralty Courts Act, 1891, Canada. |
| A.C.Act, 1861 | The Admiralty Courts Act, 1861, Imp. |
| M.S.Act | The Merchant Shipping Act, 1854, 1889. |
| R. or r..... | Rules of The Exchequer Court of Canada in Admiralty, 1893. |
| S.C.R..... | Supreme Court Reports, Canada. |
| E.C.R..... | Exchequer Court Reports, Canada. |
| C.L.T..... | Canadian Law Times. |
| Q.L.R..... | Quebec Law Reports. |
| Stu.V.A.R..... | Stuart's Vice-Admiralty Reports, Lower Canada. |
| P.E.I.R..... | Prince Edward Island Reports. |
| Y.A.D..... | Young's Admiralty Decisions, Nova Scotia. |
| L.R.Ad..... | Law Reports, Admiralty and Ecclesiastical, Eng. |
| P.D..... | Probate Divorce and Admiralty Division, Eng. |
| 1891, 1892, or 1893, P.. | Probate Divorce and Admiralty Division, Eng. |
| Wms. & B..... | Williams & Bruce's Admiralty Practice, 2nd Ed. 1886. |

CORRIGENDA.

- Page 57—7th line from bottom, for "34," read "3 & 4."
 " 304—For "Lavietta," read "Livietta."
 " 307—23rd line, end, for "Committee," read "Council."

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INTRODUCTORY CHAPTER.

VICE-ADMIRALTY COURTS IN AMERICA.

It cannot be said of any of the Vice-Admiralty Courts of British North America, or of the Dominion of Canada, as is said of the High Court of Admiralty or the Admiralty Court jurisdiction in England,—that the “early records relating to its origin are doubtful and obscure, and that it seemed to have been established at a very remote period”: Williams & Bruce’s Admiralty Practice, 2nd Ed.

British Admiralty jurisdiction and Admiralty Courts, including Prize and Instance Courts, may be said to have been introduced with British rule on the North American continent. The Governors appointed by the Crown were *ex-officio* Vice-Admirals, and judges of those courts: *see* Form of Commission, dated in 1764, Stuart’s Vice-Ad. Rep., Lower Canada, Vol. I, p. 370; and Pritchard’s Dig. 3rd Ed. 687, n.

In 1678 the King granted a commission to Governor Andros, of New York, authorizing and empowering him to appoint a judge, registrar, and marshal of the Admiralty, notwithstanding the clause in his commission of Vice-Admiral which reserved to His Majesty such nomination: *see* Broadhead & O’Callaghan’s New York Colonial M. S. S. Vol. III. p. 268.

The Dutch ship *Fortune* was condemned as prize in 1674 by the Governor of New York in his office of Vice-Admiralty judge, and the judgment was affirmed by the Admiralty Court in England: *see* Earl Bellomont’s letter to the Lords of Trade, June, 1698. *Ibid*, Vol. IV. pp. 323, 332; and Winsor’s Hist. Am., Vol. V, p. 96.

The instructions for the Earl of Bellomont, accompanying His Majesty’s commission constituting him Captain-General and Governor in Chief of His Majesty’s Province

of New York, contain a recital that His Majesty had given orders for the commissionating of fit persons to be Vice-Admirals and officers of His Majesty's Customs in His several plantations upon the continent of America, and particularly within His dominions of New England and New York, and requiring his excellency to give all due countenance and encouragement unto said officers in the execution of their respective offices and trusts in all places under his government: *Ibid.* Vol. IV. p. 292.

The Admiralty Court of the colony of Massachusetts Bay is referred to in 1720 in Mr. West's opinion upon the complaints of admiralty courts of the plantations against the frequent encroachments which they affirmed the provincial judges made upon the admiralty jurisdiction: Chalmer's *Opinions of Eminent Lawyers*, pp. 515, 516; see also Quincy's *Mass. Rep.*, pp. 74, 541.

Dr. Croke, the learned judge of the Vice-Admiralty Court of Nova Scotia, says in Nov., 1818: "I had inspected all the records of the Court, from the first establishment thereof in 1749": *The Hiram*, Stewart's *Nova Scotia Rep.* 92.

The same learned judge observes as to the office of Vice-Admiral that:—"Upon the establishment of colonial governments, it was thought proper to invest the governors with the same civil and maritime powers," (*i.e.*, as were conferred upon former Vice-Admirals in England)—and therefore it became usual for the Lord High Admiral, or the Lords commissioners, to grant a commission of Vice-Admiralty to them. The office thus conferred upon the governors was precisely the same with that of the Vice-Admirals of England, and was confined to the civil and maritime jurisdiction. . . . This is evident from the commission now produced. It gives the Vice-Admiral cognizance in all civil and maritime causes, offences and crimes; to enquire into the usages of the sea, wreck and other forfeiture, goods waved, flotsom, jetsom, lagon, and other casualties and perquisites; to take recognizances, to fine and punish offenders, to preserve the public streams

and waters; to reform nets, and unlawful engines, with other similar duties, but not a single clause which confers any military naval power whatever. In England this office has fallen into disuse. . . . In the colonies patents of Vice-Admiralty are continued to be granted to the governors; but most of their duties are, in practice, superseded by the general establishment of courts of Vice-Admiralty; many of the rights to which they relate have become obsolete or have been abolished, and other modes, more convenient for use and better adapted to the modern state of the world, have been adopted for the enforcement of a maritime police": *The Little Joe*, Stewart, at p. 407.

In New Brunswick, the Solicitor-General, *arguendo*, in the case of *Reg. v. 162 Pieces of Timber*: Berton's New Brunswick Rep. 616, in 1839, alludes to the jurisdiction of the Vice-Admiralty Court of that province to try the legality of seizures made under 8 Geo. I. c. 12, s. 5, as having been "exercised for the then last forty years."

In Newfoundland a Vice-Admiralty Court has existed many years. In 1828 a prohibition to restrain that court from proceeding against a vessel for the recovery of money advanced for repairs in a foreign port on an instrument of hypothecation, was refused by the Supreme Court of that colony, on the ground that such hypothecation was a subject solely of admiralty jurisdiction: *The schooner Margaret & Isabella*, Cases in Supreme Court, N. F., *temp*, Tucker, C.J., p. 548.

In 1764 a commission was issued, tested in the High Court of Admiralty under the great seal, to the Governor-in-Chief of the Province of Quebec, constituting him Vice-Admiral of the same, conferring powers and jurisdiction in "matters civil and criminal occurring on the sea and shores, creeks or coasts of the sea or maritime, or in, upon, or by all fresh waters, ports, public streams, or places overflown whatsoever, within the ebbing and flowing of the sea and high water." Stuart's Vice-Ad. Rep., p. 370. And the first Judge of the Vice-Admiralty Court of Quebec was appointed in 1764: *Ibid.* p. 370.

The reported decisions of the Vice-Admiralty Court of Prince Edward Island, as also those of British Columbia, are not numerous; certain of them are referred to in the following pages.

DOMINION OF CANADA.

Under the British North America Act, sec. 15, the command-in-chief of the naval as well as military forces of and in Canada continues vested in the Queen. That part of the Governor General's commission by which he became *ex-officio* Vice-Admiral, does not appear in the recent commissions or in the Letters Patent constituting the office of Governor General: See these Instruments with the Draft Instructions to the Governor General in Munro's Constitution of Canada, pp. 330-337; and Clement's Canadian Constitution, p. 630. Her Majesty may by commission under the great seal empower the Admiralty to establish in a British possession any Vice-Admiralty Court or Courts: Tarring on the Colonies, 2nd Ed., 1893, p. 173, *cit.* 12 & 13 V. c. 96, s. 3, and C. C. A. Act, s. 9, *infra*. But in Canada *The Admiralty Act, 1891, infra*, has constituted the Exchequer Court a Colonial Court of Admiralty, and made provision for the appointment of local judges in Admiralty, instead of the former Vice-Admiralty judges; the judge of the Exchequer Court being appointed by the Governor General in Council by Letters Patent under the great seal: 50-51 V. c. 16, s. 3.

PROHIBITION.

It has been held that prohibition will lie to a Vice-Admiralty Court from the Superior Courts of common law of the colony in which such courts are established, to restrain a Vice-Admiralty Court from exceeding its jurisdiction in instance causes: *Key v. Pearse, cited in Le Caux v. Eden*, Dougl. 584, 606, 609; *Lindo v. Rodney*, Dougl. 618, 619. No prohibition can issue to the Vice-Admiralty Courts in prize matters: *Key v. Pearse, ubi sup.* There are several instances of prohibitions having been issued to Vice-Admiralty Courts in instance causes: *Hamilton v. Fraser, The Trio*, Stuart V. Ad. Rep. 21;

Howard v. The Ship *Camillus*, *Ib.* 158, 1823 ; Ritchie v. Orkney, *Ib.* 618 ; *The Margaret and Isabella*, Cases, Supreme Court, Newfoundland, 548, *temp.* Tucker, C.J.

Those cases in which prohibition issued which depended on the rule applicable to matters arising *infra corpus comitatus*, such as Howard v. The Ship *Camillus*, *ubi sup.*, will, it is submitted, cease to govern, since the Colonial Courts of Admiralty Act, 1890, gives Colonial Courts of Admiralty the like jurisdiction with the Admiralty Division in England, which has jurisdiction whether the ship may have been within the body of a county or upon the high seas : 3 & 4 V. c. 65, s. 6.

PRIZE CAUSES.

Without the warrant of the Lords of the Admiralty, no Vice-Admiralty Court would have jurisdiction in prize causes : 1 Asp. N. S. 482 ; and see C. C. A. Act, s. 2, s-s. 3.

By the Naval Prize Act, 1864, s. 4, the High Court of Admiralty as a Prize Court has power to enforce any order or decree of a Vice-Admiralty Prize Court ; and by s. 9 :— every Vice-Admiralty Prize Court shall enforce within its jurisdiction all orders and decrees of the Judicial Committee in Prize Appeals and of the High Court of Admiralty in Prize Causes.

PRACTICE IN HIGH COURT OF JUSTICE.

It will be found, upon a careful examination of the general rules and orders annotated in this book, that they, together with the prescribed forms, meet every case and cover almost every point likely to arise in ordinary practice ; and that upon comparison with former rules, and particularly with the rules and practice of the former High Court of Admiralty, and of the Admiralty Division, (for it is allowable to speak of that part of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England as the "Admiralty Division" : Wms. & B. 2nd Ed. 18),— that the cases unprovided for are not at all numerous.

But if any case should arise which is not specifically provided for, the practice for the time being in force in

respect to Admiralty proceedings, in the High Court of Justice in England, may be followed: R. 228. *infra*. That court in turn falls back, in cases unprovided for by its rules, upon practice existing at the time they came into operation; which was the practice regulated by the rules of the High Court of Admiralty, 1859: Wms. & B. Ad. Prac. 2nd Ed. 563. Thus, the Colonial Courts of Admiralty will in some respects follow the practice of the High Court of Admiralty as it was under the rules last mentioned.

Doubts arise from time to time in the practice in England as to whether the rules and procedure of the High Court, applicable in other Divisions, are also applicable to cases in the Admiralty Division, unless that Division is expressly named, *e. gr.*, rule 376 enables a party, where admissions of fact have been made in pleadings or otherwise, to apply for judgment on such admissions. The learned authors already quoted, say, p. 416, as to this:—"The rule is general in terms, but it is submitted that its provisions do not enable judgments on admissions to be obtained in admiralty actions *in rem*. In those actions it may often happen that though a defendant has intervened to protect his interest, and is ready to make, and has made, admissions of fact, the rights of third parties in property under arrest would be affected by a judgment on such admissions. It is apprehended that this could not have been the intention of those who framed the rule in question."

Such comparison further shows that as to that part of the practice and procedure which is peculiar to Admiralty,—such as service of process on and arrest of the *res*,—ship, or other property; nautical assessors; reference to the registrar and merchants; and some other matters,—the rules provide fully and specifically; and that as to that part which is not peculiar to Admiralty, but common to all the division of the High Court of Justice in England, the rules contain, in certain cases, general provisions, leaving it in the discretion of the judge to order and give directions as occasion arises, as to the procedure to be taken. Instances are seen in

Rule 32 relating to parties, and in Rule 16 relating to service of the writ on persons under disability. Rule 16 refers to service of writ of summons in actions *in personam* on such persons, but under the heading 'Parties,' Rule 32 reposes a discretion in the judge in general terms which, no doubt, will, in accordance with Rule 228, be exercised by adopting the practice of the Admiralty Division; as to which it may be observed that the practice of the former High Court of Admiralty required the filing of an instrument called a proxy: Coote's Ad'y. 2nd Ed. 114. The present practice of the High Court, England, as to parties under disabilities, common to all Divisions, as set forth in rules, is as follows: (a)

"Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or judge at the time of hearing such application shall dispense with such last-mentioned service." Order XIII. R. 1.

Where the defendant was a minor resident out of the jurisdiction, and notice of the writ had been served upon her, and upon her guardian nominated by the foreign

(a) Wilson's Jud. Acts and Prac., 7th Ed., 179; Snow's note to Ord. 16, R. 20.

Court, but no appearance had been entered on her behalf, and it appeared that her guardian declined to enter an appearance, the Court, holding that the practice was governed by the above rule 1 of Order XIII., nominated the official solicitor of the Court to be the defendant's guardian *ad litem*: *White v. Ducernay*, 1891, P. 290.

"Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Act, 1882." Ord. XVI. R. 16.

"Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the principal Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Chancery Division, and may in like manner defend any action by their committees or guardians appointed for that purpose." *Ibid.* R. 17.

"An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance shall make and file an affidavit in the Form No. 8 in Appendix A., Part II. with, such variations as circumstances may require." *Ibid.* R. 18.

"Every infant served with a petition or notice of motion or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last rule mentioned." *Ibid.* R. 19.

"Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to

the solicitor for that purpose, and the authority shall be filed in the Central Office, or in the District Registry if the cause or matter is proceeding therein." *Ibid.* R. 20.

"In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy." *Ibid.* R. 21.

The consent or authority of next friend, or new next friend, must accompany the commencement of proceedings in which the plaintiff or applicant is an infant or person of unsound mind. The form of which is: "(Title of action)—I hereby authorize you to use my name as next friend of the plaintiff or applicant or petitioner). A B.,

Signature of next friend."

Addressed to solicitor.

Snow's An. Pr. 1890-91, p. 354, and see Ord. XIII. R. 1, *ante*.

AFFIDAVIT.

The form referred to p. 22, *ante*.

Title of Action.

I , of , make oath and say as follows:—
A. B., of , is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [or matter] adverse to that of the said infant, and the consent of the said A. B. to act as such guardian is hereto annexed.

Sworn, etc.

Annex written consent signed by intended guardian :
Wilson Prac. 7th Ed. pp. 182, 531.

The foregoing practice of the High Court, Eng., has been quoted at some length in view of the provision contained in Rule 228 of the rules annotated in this book ; and also in view of judicial opinion to the effect that, the Admiralty Court being now merged in a Division of the High Court, it is therefore desirable that, so far as possible, the practice in it should be the same as in the other Divisions: *Per Butt, J.*, in *The J. H. Henkes*, 12 P. D. 106 (1887).

TRANSFER OF ACTIONS IN THE HIGH COURT.

The question has been raised whether by reason of the provisions of the Judicature Acts, England, the Admiralty Division there can exercise a more extensive jurisdiction than that formerly exercised by the High Court of Admiralty: *Wm. & B. 2nd Ed. 74*, citing *Pinney v. Hunt*, 6 Ch. D. 98, and *Bradford v. Young*, 28 *Ib.* 656. It appears at present to be the practice of that Division not to dismiss cases improperly instituted in it, but to transfer them to the proper Division: *The Seaham*, 48 L. J. Ad. 29 ; and the other Divisions transfer shipping cases to the Admiralty Division: *Hawkins v. Morgan*, 49 L. J. Ad. 618. Such practice being incident to the merging above referred to, of the Admiralty Division in the High Court, could not, it would seem, afford precedent for courts under the Colonial Courts of Admiralty Act, 1890, although it would to some extent indicate the cases in which a protest to the jurisdiction would succeed or when it would fail.

Advocates and proctors in the Court of Arches were by 3 & 4 V. c. 6, s. 2, declared entitled to act as advocates and proctors in the High Court of Admiralty ; and the A. C. Act, 1861, provided for proctors acting as agents of solicitors in that Court. Since the commencement of the Judicature Act, 1873, solicitors, attorneys, and proctors there, are, from the commencement of the Act, to be known only as solicitors of the Supreme Court : s. 87.

In Canada, all persons who are barristers or advocates in any of the Provinces, may practise as barristers, advocates and counsel in the Exchequer Court: 50 & 51 V. c. 16,—An Act to amend the Supreme and Exchequer Courts Act, etc.: s. 12.

And all persons who are attorneys, or solicitors of the Superior Courts in any of the Provinces may practise as attorneys, solicitors, and proctors in the Exchequer Court: *Ibid.* s. 13.

And all persons who may practise as barristers, advocates, counsel, attorneys, solicitors, or proctors in the Exchequer Court shall be officers of such Court: *Ibid.* s. 14.

And as an address for service, not more than three miles from the registry is to be given under Rules 7, 28 and 183, *infra*, there will of necessity be the employment by solicitors residing at other places of agents residing at the place where the registry is established; in which case the High Court practice will no doubt under Rule 228 be followed, as to which see Wilson's Jud. Acts and Rules, 7th Ed. 134.

The practice of issuing commissions to take bail has in England, been discontinued, the practice there being since 1883 for bail to be given before a commissioner to administer oaths in the Supreme Court: Wms. & B. 287-288 and note. As the Rule 46, *infra*, provides for a bail bond, when not signed before the registrar, being signed "before a commissioner having authority to take acknowledgements or recognizances of bail in the Court," it would appear to be a compliance with the rule to sign the bond before a commissioner under the Supreme and Exchequer Courts Act, R. S. C. c. 135, by which it was provided (s. 91) that, "All persons authorized to administer affidavits to be used in any of the Superior Courts of any Province may administer oaths, affidavits and affirmations in such Province to be used in the Supreme Court or in the Exchequer Court." And by section 106 every commissioner for administering

oaths in the Supreme Court, and in the Exchequer Court of Canada, who resides within Canada, may take and receive acknowledgements or recognizances of bail, and all other recognizances in the Supreme Court and in the Exchequer Court;" and by the Exchequer Court Act, 1887, 50 & 51 V. c. 16, s. 44, "Every commissioner for administering oaths in the Supreme Court and in the Exchequer Court of Canada, who resides within Canada may take and receive acknowledgments or recognizances of bail and all other recognizances, in the Exchequer Court." The Rules, however, 46, 48, and forms, provide for the issue of a commission, and where the bail is to be taken at an out-port or place where no commissioners for taking affidavits reside, that would appear to be the only course open to the practitioner.

Questions of practice and procedure in Admiralty cases in the Exchequer Court will no doubt arise upon the Rules, as well as in the unprovided for cases, which will only be settled by the decision of the Judge of that Court, whose decisions when rendered will be binding in the Courts of the local judges.

The Exchequer Court as a Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, it will be observed, may for the purposes of the jurisdiction in that Act mentioned, exercise all the powers which it possesses for the purpose of its other civil jurisdiction: C. C. A. Act, 1890, s. 2 (1).

THE CANADA ADMIRALTY ACT, 1891. ^(a)

An Act to provide for the exercise of Admiralty Jurisdiction within Canada, in accordance with "The Colonial Courts of Admiralty Act, 1890" (b).

[Assented to 31st July, 1891.]

WHEREAS by the third section of the Act of ^{Preamble.}
the Parliament of the United Kingdom, passed in the session held in the fifty-third and fifty-fourth years of Her Majesty's reign, chapter twenty-seven, intituled "*An Act to amend the Law*" ^{53-54 V. (Imp.) c. 27.}
respecting the exercise of Admiralty Jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom," it is amongst other things provided that the Legislature of a British Possession may, by any colonial law, declare any court of unlimited civil jurisdiction, whether original or appellate, in that Possession, to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under the said Act; and whereas the authority given is exercisable by the Parliament of Canada by virtue of the powers ^{30-31 V. (Imp.) c. 63.}
vested in it by "*The British North America Act, 1867,*" and "*The Interpretation Act, 1889,*" of the ^{52-53 V. (Imp.) c. 63.}
United Kingdom; and whereas the expression "unlimited civil jurisdiction," as defined by the

(a) 54-55 Victoria, c. 29. In force Oct. 2, 1891; Procl. Canada Gazette Oct. 10, 1891, and Stats. Can., 1892, lxiii.

(b) For the Colonial Courts of Admiralty Act (Imp.). See Appendix.

Sections 1-3. Act first herein referred to, which may be cited as "*The Colonial Courts of Admiralty Act, 1890*," means civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered; and whereas by the second section of the said "*Colonial Courts of Admiralty Act, 1890*," it is amongst other things enacted that every court of law in a British possession, which is, for the time being, declared in pursuance of the said Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in the said Act mentioned; and whereas the Exchequer Court of Canada is a court of law which, within Canada, has original unlimited civil jurisdiction as defined by the said Act, and it is desirable, in pursuance of the said Act, to declare the said court to be a Court of Admiralty: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as "*The Admiralty Act, 1891*."

Interpretation.

2. In this Act the expression "the Exchequer Court," or "the court," means the Exchequer Court of Canada.

Exchequer Court constituted a Court of Admiralty.

3. In pursuance of the powers given by "*The Colonial Courts of Admiralty Act, 1890*," aforesaid, or otherwise in any manner vested in the Parliament of Canada, it is enacted and declared that the Exchequer Court of Canada is and shall be, within Canada, a Colonial Court of Admiralty, and as a Court of Admiralty shall, within Canada,

have and exercise all the jurisdiction, powers and authority conferred by the said Act and by this Act. Sections 4-6.

4. Such jurisdiction, powers and authority ^{Jurisdiction.} shall be exercisable and exercised by the Exchequer Court throughout Canada, and the waters thereof, whether tidal or non-tidal, or naturally navigable or artificially made so, and all persons shall, as well in such parts of Canada as have heretofore been beyond the reach of the process of any Vice-Admiralty Court, as elsewhere therein, have all rights and remedies in all matters (including cases of contract and tort and proceedings *in rem* and *in personam*), arising out of or connected with navigation, shipping, trade or commerce, which may be had or enforced in any Colonial Court of Admiralty under "*The Colonial Courts of Admiralty Act, 1890.*"

5. The Governor in Council may, from time to time, constitute any part of Canada an Admiralty ^{Admiralty districts and registries.} district for the purposes of this Act, and fix the limits thereof, and provide for the establishment at some place therein of a registry of the Exchequer Court on its admiralty side.

2. The Governor in Council may also, from time to time, change the limits of any admiralty district, create new districts, and assign to any district a name and place of registry.

6. The Governor in Council may, from time to time, appoint any judge of a Superior or County Court, or any barrister of not less than seven years' standing, to be a local judge in Admiralty of the Exchequer Court in and for any Admiralty ^{Local judges in admiralty.}

Sections 7-10. district; and every such local judge of Admiralty shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons; and such judge shall be designated a local judge in Admiralty of the Exchequer Court.

Oath of office. 7. Every such local judge in Admiralty shall, previously to his entering on the duties of his office, take, before the judge of the Exchequer Court or a judge of any Superior Court, an oath in the form following, that is to say:—

“ I, do solemnly and sincerely swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as local judge in Admiralty in and for the Admiralty district of (*as the case may be*). So help me God.”

Officers of court. 8. The Governor in Council may, from time to time appoint for any district a registrar, a marshal and such other officers and clerks as are necessary.

Powers of local judges. 9. Every local judge in Admiralty shall, within the Admiralty district for which he is appointed, have and exercise the jurisdiction, and the powers and authority relating thereto, of the judge of the Exchequer Court in respect of the Admiralty jurisdiction of such court.

Deputy judges. 10. A local judge in Admiralty may, from time to time, with the approval of the Governor in Council, appoint a deputy judge, and such deputy judge shall have and exercise all such jurisdiction, powers and authority as are possessed by the local judge.

2. The appointment of a deputy judge shall not Sections 11-13
be determined by the occurrence of a vacancy in Tenure of office.
the office of the judge.

3. A local judge in Admiralty may, with the approval of the Governor in Council, at any time revoke the appointment of a deputy judge.

11. The Governor in Council may, from time Surrogate judges.
time to time, appoint, for any district or portion of a district, a surrogate judge or judges; and such surrogate judge shall have such jurisdiction, powers and authority, and be paid such fees, as are, from time to time, prescribed by general rules or orders.

2. A surrogate judge shall hold office during Tenure of office.
pleasure; and his appointment shall not be determined by the occurrence of a vacancy in the office of the local judge of his district.

12. Every deputy and surrogate judge shall, Oaths.
previously to entering on the duties of office, take, before the judge of the Exchequer Court, or the judge of any Superior Court, an oath similar in form to that to be taken by a local judge.

13. Any suit may be instituted in any district Where suits may be instituted.
registry when—

(a) The ship or property, the subject of the suit, is at the time of the institution of the suit within the district of such registry;

(b) The owner or owners of the ship or property, or the owner or owners of the larger number of shares in the ship, or the managing owner or the ship's husband reside at the time of the institution of the suit within the district of such registry;

(c) The port or registry of the ship is within the district of such registry; or—

**Sections
14-17.**

(d) The parties so agree by a memorandum signed by them or by their attorneys or agents :

Proviso.

Provided always, that when a suit has been instituted in any registry, no further suit shall be instituted in respect of the same matter in any other registry of the court, without leave of the judge of the court, and subject to such terms, as to costs and otherwise, as he directs.

Appeal.

14. An appeal may be made to the Exchequer Court from any final judgment, decree or order of any local judge in Admiralty, and, with the permission of such local judge or of the judge of the Exchequer Court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as are prescribed by general rules or orders.

2. An appeal may, however, be made direct to the Supreme Court of Canada from any final judgment, decree or order of a local judge, subject to the provisions of "*The Exchequer Court Act*" regarding appeals.

**Removal of
suit.**

15. Any party to a suit or to an appeal may, at any stage of such suit or appeal, by leave of the court, and subject to such terms as to costs or otherwise as the court directs, remove any suit instituted or appeal pending in any registry to any other registry.

Fees, &c.

16. A scale of costs and charges in Admiralty causes in the district registries of the court, and fees to be taken in such registries, shall be prescribed by general rules or orders.

**Provisional
districts and
registries.**

17. Until otherwise provided by the Governor in Council, the following provinces shall each

constitute an Admiralty district, for the purposes of this Act, and a registry of the Exchequer Court on its Admiralty side shall be established and maintained within such districts at the places following, that is to say :—

Section 18.

(a) The Province of Quebec shall constitute the district of Quebec, with a registry at the city of Quebec ;

(b) The Province of Nova Scotia shall constitute the district of Nova Scotia, with a registry at the city of Halifax ;

(c) The Province of New Brunswick shall constitute the district of New Brunswick, with a registry at the city of St. John ;

(d) The Province of Prince Edward Island shall constitute the district of Prince Edward Island, with a registry at the city of Charlottetown ; and—

(e) The Province of British Columbia shall constitute the district of British Columbia, with a registry at the city of Victoria.

18. Until otherwise provided by the Governor in Council, there shall be a registry of the Exchequer Court on its Admiralty side at the city of Toronto, and the Governor in Council may, from time to time, fix the limits of such registry, which shall be known as "The Toronto Admiralty District." (c)

Toronto district.

(c) *Order in Council.*—"By Order in Council of 27th November, 1891, under the authority of sections 5 and 18 of *The Admiralty Act, 1891*, it was ordered that the limits of the Toronto Admiralty District and of the registry thereof shall be all that portion of Canada comprising the

Admiralty District, Toronto, to include all Ontario.

**Sections
19-21.**

Province of Ontario, including all such waters as form part of said Province." (*Canada Gazette*, vol. xxv., p. 1134, and *Statutes Canada*, 1892, lxix.)

As to judges of
Vice-Admiral-
ty Courts.

19. Every person who, at the coming into force of "*The Colonial Courts of Admiralty Act*, 1890," holds in Canada the office of judge of a Vice-Admiralty Court, shall, until his death, resignation or removal from such office or from the office by virtue of which he is such judge of a Vice-Admiralty Court, or until an arrangement is made with him under the seventeenth section of the Act last mentioned, have and exercise, within the Admiralty district corresponding to the limits of his former jurisdiction as such judge of a Court of Vice-Admiralty, all the jurisdiction, powers and authority of a local judge in Admiralty.

As to judge of
Maritime
Court of
Ontario.

20. The judge of the Maritime Court of Ontario shall, in like manner and for a like time, have and exercise within the Toronto Admiralty district all the jurisdiction, powers and authority of a local judge in Admiralty.

As to officers
of Vice-Admir-
alty Courts.

21. Every person who, at the coming into force of "*The Colonial Courts of Admiralty Act*, 1890," is a registrar, marshal or other officer of a Vice-Admiralty Court in Canada, shall, during the pleasure of the Governor in Council, and within the Admiralty district corresponding to the limits of the jurisdiction of such Vice-Admiralty Court, have and exercise the like office in the Exchequer Court in respect of its Admiralty jurisdiction, and shall, subject to any general rule or order, have the like powers and authority, and perform the like duties, as he might have had or performed, as such registrar, marshal or other officer of a Vice-Admiralty Court.

22. The registrar and marshal of the Maritime Court of Ontario shall, during the pleasure of the Governor in Council, be the registrar and marshal, respectively, of the Toronto Admiralty district.

Sections.
22-24.

As to registrar
and marshal
of Maritime
Court of Ont-
rio.

23. On the coming into force of this Act, the Maritime Court of Ontario shall be abolished, but subject to the following provisions:—

Maritime
Court of Onta-
rio abolished.

(1) All judgments of such court shall be executed and may be appealed from in like manner as if this Act had not been passed, and all appeals from such court pending at the commencement of this Act shall be heard and determined and the judgment thereon executed as nearly as may be in like manner as if this Act had not been passed:

(2) All proceedings pending in such court at the commencement of this Act shall be continued in the district registry corresponding to that in which they were instituted or are now pending:

(3) The procedure and practice (including fees and costs) now in force in such court shall, until otherwise provided by general rule or order, be followed, as nearly as may be, in any proceeding now pending in such court or hereafter instituted in the registry of any Admiralty district in the Province of Ontario:

(4) The provisions of the fifth and sixth subsections of the fourteenth section of "*The Maritime Court Act*," shall apply to any proceeding instituted in the registry of any Admiralty district in the Province of Ontario.

24. Nothing in sections five to twenty-two of this Act, both inclusive, shall limit, lessen or impair the jurisdiction of the judge of the Exchequer

Construction.

**Sections
25, 26.**

Court in respect of the Admiralty jurisdiction of the court, or otherwise.

Rules of court.

25. Any rules or orders of court made by the Exchequer Court of Canada for regulating the procedure and practice therein, (including fees and costs), in the exercise of the jurisdiction conferred by "*The Colonial Courts of Admiralty Act, 1890*," and this Act, which require the approval of Her Majesty in Council, shall be submitted to the Governor in Council for his approval, and, if approved by him, shall be transmitted to Her Majesty in Council for Her approval.

**Commence-
ment of Act.**

26. This Act shall not come into force until Her Majesty's pleasure thereon has been signified by proclamation in the *Canada Gazette*. (d)

(d) See p. 1, note.

GENERAL RULES AND ORDERS

Rule 1.

REGULATING THE

PRACTICE AND PROCEDURE IN

ADMIRALTY CASES IN THE EXCHEQUER COURT OF CANADA.

In pursuance of the provisions of "*The Colonial Courts of Admiralty Act, 1890*" and of "*The Admiralty Act, 1891*," (Canada), it is ordered that the following rules of court for regulating the practice and procedure (including fees and costs) of the Exchequer Court of Canada in the exercise of its jurisdiction, powers and authority as a court of Admiralty shall be in force in the said court.

1. In the construction of these rules, and of <sup>Interpreta-
tion.</sup> the forms and tables of fees annexed thereto, the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them; that is to say:—

- (a) Words importing the singular number in- <sup>Singular or
plural num-
ber.</sup> clude the plural number, and words importing the plural number include the singular number;
- (b) Words importing the masculine gender <sup>Masculine
gender.</sup> include females;
- (c) "District shall mean an Admiralty district ^{Distr.ct.} constituted by or by virtue of *The*

| | |
|----------------|---|
| <u>Rule 1.</u> | <i>Admiralty Act, 1891</i> ; and in respect of proceedings in the registry of the court at Ottawa shall include the whole of Canada ; |
| Court. | (d) "Court" or "Exchequer Court" shall mean the Exchequer Court of Canada ; |
| Registry. | (e) "Registry" shall mean the registry of the court, or any district registry thereof ; |
| Judge. | (f) "Judge" shall mean the judge of the court, or a local judge in admiralty of the court; or any person lawfully authorized to act as judge thereof ; |
| Registrar. | (g) "Registrar" shall mean the registrar of the court, or any deputy, assistant or district registrar thereof ; |
| Marshal. | (h) "Marshal" shall mean the marshal of the court, or any deputy, assistant or district marshal thereof, or any sheriff or coroner authorized to perform the duties and functions of a sheriff in connection with the court ; |
| Action. | (i) "Action" shall mean any action, cause, suit, or other proceeding instituted in the court ; |
| Counsel. | (j) "Counsel" shall mean any advocate, barrister-at-law, or other person entitled to practice in the court ; |
| Solicitor. | (k) "Solicitor" shall mean any proctor, solicitor or attorney entitled to practice in the court ; |
| Plaintiff. | (l) "Plaintiff" shall include the plaintiff's solicitor, if he sues by a solicitor ; |

- (m) "Defendant" shall include the defendant's solicitor, if he appears by a solicitor; Rule 2.
Defendant
- (n) "Party" shall include the party's solicitor, if he sues or appears by a solicitor; Party.
- (o) "Person" or "party" shall include a body corporate or politic; a Person or party.
- (p) "Ship" shall include every description of vessel used in navigation not propelled by oars only; Ship.
- (q) "Month" shall mean calendar month. Month.

ACTIONS.

2. Actions shall be of two kinds, actions *in rem* and actions *in personam* Actions of two kinds.

The action *in rem* is a proceeding against the ship or property, or the proceeds thereof if in court (a). Whenever a maritime lien exists Admiralty Courts can enforce it by proceedings *in rem*, and, indeed, are the only courts competent to so enforce it (b). It is the usual form of action in Admiralty in all cases where a maritime lien exists, *e.g.*, salvage, damage arising out of collision, wages, bottomry, and respondentia (c); as well as in certain other cases as to which jurisdiction *in rem* has been conferred by statute without creating a lien, and in which, though there is no such lien, the plaintiff by virtue of the proceedings *in rem* instituted against the ship or proceeds has a lien or security thereon for his claim: a distinction drawn in a late case in the Court of Appeal (Eng.) (d), an action for repairs, and in cases there cited. In such cases the lien takes effect from the moment of arrest (e).

(a) Williams & Bruce's Admiralty Prac., 2nd, ed. 236; Roscoe, 101.

(b) *The Brig Nestor*, 1 Sumner (Am.) 78, (Story, J.).

(c) Boyd's Merchant Shipping Laws, 417.

(d) *The Cella*, 13 P. D. 82 C. A.

(e) *Ibid.*

Rule 2.

Mariners wages may be proceeded for by action *in rem* (f), or by action *in personam* against the master, or the owners, or both (g); but with certain restrictions and limitations as to amount (h) going to the question of costs; and owners of vessels damaged by collision have their choice of three modes of proceeding in Admiralty, viz., against the owners or the master personally, or against the ship itself (i).

Actions for salvage also may be either *in rem* or *in personam* (j); except salvage of life which is *in rem* only (k).

An action *in personam* may be brought against the owners of the wrong-doing ship in case of collision, or any of them if within the jurisdiction of the court; as tortfeasors they are jointly and severally liable, and where their ship has been sunk this is the only mode of proceeding by which to make them liable (l); and a passenger or seaman (m) may sue the master of a vessel in Admiralty for personal damage (mm).

The action when it is once commenced, either *in rem* or *personam* must continue in the form in which it is begun and cannot be changed (n). But a plaintiff having obtained a decree in an action *in rem*, may on instituting an action *in personam*, recover damages unsatisfied by the proceedings *in rem* (o).

Where a vessel belongs to a company chartered or incorporated by Act of Parliament, it may be requisite to

(f) *The Madonna D'Idra*, 1 Dods. 40; *Hook v. Morton*, 1 Ld. Raym. 398; 24 V. c. 10, s. 10; and *Abbott on Shipping*, 13th ed. (1892), 810.

(g) *The Jack Park*, 4 C. Rob. 311; *Davis v. Rotch*, Marsden's Rep. 20; *Ragg v. King*, 2 Stra. 858; *Baley v. Grant*, 1 Salk. 33.

(h) M. S. Act, s. 189; The Admiralty Court Act, 1861, s. 10, *post*; The Seamen's Act, 1873, s. 56.

(i) *The Volant*, 1 W. Rob. 387.

(j) *The Hope*, 3 C. Rob. 215; *The Meg Meridies*, 3 Hagg. 346; *The Rapid*, 3 Hagg. 419; M. S. Act, s. 458.

(k) The cargo *ex Serpdon* 3 P. D. 28; the cargo *ex Schiller*, 2 P. D. 145.

(l) *Pritchard* 3rd ed., p. 1489, n. 102.

(m) *The Ruckers*, 4 C. Rob. 73.

(mm) *The Enchantress*, 1 Hagg. Ad. 395.

(n) *The Hope*, 1 W. Rob. 144; *Humphrey v. Edwards*, 45 L. J. Ch. 112.

(o) *The Orient*, L. R. 3 P. C. 696; *The Zephyr*, 11 L. T. N. S. 351; and see *The Dictator*, *post*.

give notice before instituting an action against the vessel, Rules 3-5.
as in such Acts there is sometimes a provision to that
effect (p).

3. Actions for condemnation of any ship, boat, Actions in name of Crown.
cargo, proceeds, slaves, or effects, or for recovery
of any pecuniary forfeiture or penalty, shall be
instituted in the name of the Crown.

4. All actions shall be entitled in the court, Actions to be numbered.
and shall be numbered in the order in which they
are instituted, and the number given to any action
shall be the distinguishing number of the action,
and shall be written or printed on all documents in
the action as part of the title thereof. Forms of
the title of the court and of the title of an action
will be found in the appendix hereto, Nos. 1, 2, 3
and 4.

Lis alibi pendens.—Where it was shown in an action
in personam for damage against owners, that an action *in*
rem was pending in a Vice-Admiralty Court abroad, the
court stayed proceedings until after the hearing of the
cause abroad (q).

As to circumstances which determine when suit may be
instituted in any District Registry—See *The Admiralty*
Act, 1891, s. 13, *ante*.

WRIT OF SUMMONS.

5. Every action shall be commenced by a writ Writ to be indorsed with statement, &c.
of summons which, before being issued, shall be
indorsed with a statement of the nature of the
claim, and of the relief or remedy required, and of
the amount claimed, if any. Forms of writ of
summons and of the indorsements thereon will be

(p) *The Longford*, 14 P. D. 34.

(q) *The Peshawur*, 8 P. D. 32. See also *The Christiansborg*, 10
P. D. 141, C. A., in which *McHenry v. Lewis*, 22 Ch. D. 397 is approved
and applied.

Rule 5. found in the appendix hereto, Nos. 5, 6, 7, 9 and 10.

It is noted with regard to the corresponding rules governing the practice in England, that no forms of specially indorsed writs in Admiralty actions *in rem* are given in the appendices (r). Such is also the case as to the present rules, except in certain actions such as possession, an amount made up of the amount of the plaintiff's claim and an additional sum to cover costs is usually indorsed on the writ (s).

In an action *in rem*, if the statement on the writ differs from that in the affidavit to obtain the arrest of the ship, the court will allow the writ to be amended on application, and the plaintiffs will have to pay the costs of the application (t). If the amount claimed on the writ proves during the subsequent proceedings to be too small, the court will enlarge the amount on the application of the plaintiffs, who will have to pay the costs of such application, but it is doubtful if the bail will also be increased (u). The amount indorsed on the writ should be such as may reasonably be expected to cover the amount of the claim and the costs of the action (v). But if the costs are not covered by the amount indorsed on the writ, the court will order execution, or a writ of arrest against property to issue to satisfy the balance if good reason can be shown for this course (w).

A writ *in personam* for service within the jurisdiction is invalidated by the omission of the address of the defendant. Where therefore such a writ was addressed to a foreign corporation without giving its address, it was held that having regard to Ord. II. r. 3 (Eng.), the omission was material, and that the writ was invalid, and must be set aside (x).

(r) Wms & B. 2nd ed., 239n.

(s) *Ibid.* 285.

(t) *The Princess Royal*, L. R. 3 Ad. 27; 39 L. J. Ad. 29.

(u) *The Johannes*, L. R. 3 Ad. 127; 39 L. J. Ad. 41.

(v) *The Earl Grey*, 1 Spk. 180.

(w) *The Temiscouta*, 2 Spk. 208; *The Freedom*, 25 L. T. N. S. 392; L. R. 3 Ad. 405.

(x) *The W. A. Sholten*, 13 P. D. 8.

6. In an action for seaman's or master's wages, Rules 6-9.
or for master's wages and disbursements, or for Indorsement may include claim to have an account taken.
necessaries, or for bottomry, or in any mortgage
action, or in any action in which the plaintiff
desires an account, the indorsement on the writ of
summons may include a claim to have an account
taken.

7. The writ of summons shall be indorsed with Address for service to be indorsed.
the name and address of the plaintiff, and with an
address to be called an address for service, not
more than three miles from the registry, at which
it shall be sufficient to leave all documents required
to be served upon him.

The writ should set out the names of the plaintiffs, or
if they are co-partners the name of their firm, or if they
are the owners of a ship or other property, and are pro-
ceeding as such owners, it is sufficient so to describe
them. (Wms. & B. Ad. Prac. 2nd ed., 238.)

8. The writ of summons shall be prepared and Preparation and issue of writ.
indorsed by the plaintiff, and shall be issued under
the seal of the court, and a copy of the writ and of
all the indorsements thereon, signed by the plain-
tiff, shall be left in the registry at the time of
sealing the writ.

9. The judge may allow the plaintiff to amend Amendment of writ and indorsements.
the writ of summons and the indorsements thereon
in such manner and on such terms as to the judge
shall seem fit.

In an action *in rem* for salvage services rendered to a
ship, her cargo, and freight, the plaintiffs indorsed the writ
with a claim for £5,000, and the owners of the ship, cargo
and freight gave an undertaking through their solicitor
to put in bail for that amount. The statement of claim
delivered, concluded with a claim in the usual form for
"such an amount of salvage as to the court may seem just."

Rule 10. At the hearing of the action the court made an award of £7,500. Thereupon the plaintiffs, before the decree was drawn up, moved for leave to amend the indorsement of the writ by altering the sum named therein to £8,500; and it was held that the court had power after judgment to give the required leave, and the court ordered the indorsement of the writ to be amended by altering the amount named thereon to £8,500, the plaintiffs paying the costs of the motion (*y*).

In an action *in personam* for damage by collision the name of the agent, instead of that of the owner of the cargo on board the plaintiff's vessel, was by a *bona fide* mistake inserted in the writ as a co-plaintiff; and after decree the mistake was ordered to be corrected (*z*).

SERVICE OF WRIT OF SUMMONS.

Service in
action *in rem*.

10. In an action *in rem*, the writ of summons shall be served—

Upon ship, or
cargo, &c., on
board ship.

(*a*) upon ship, or upon cargo, freight, or other property, if the cargo or other property is on board a ship, by attaching the writ for a short time to the main-mast or the single mast, or to some other conspicuous part of the ship, and by leaving a copy of the writ attached thereto;

Upon cargo,
&c., not on
board ship.

(*b*) upon cargo, freight, or other property, if the cargo or other property is not on board a ship, by attaching the writ for a short time to such cargo or property, and by leaving a copy of the writ attached thereto;

Upon freight.

(*c*) upon freight in the hands of any person, by showing the writ to him and by leaving with him a copy thereof;

(*y*) *The Dictator*, 1892, P. 64.

(*z*) *The Duke of Buccleugh*, 1892, P. 201, C. A.

- (d) upon proceeds in court, by showing the writ to the registrar and by leaving with him a copy thereof. Rules 11-15.
Upon proceeds in court.

Service of a writ of summons *in rem*, effected in the manner prescribed is equivalent to a notice to the owners of the subject-matter of the service and to all who may be interested in it (c).

An amended writ must be served in the same way as if it had been an original writ (b).

11. If access cannot be obtained to the property on which it is to be served, the writ may be served by showing it to any person appearing to be in charge of such property, and by leaving with him a copy of the writ. If access cannot be obtained.

12. In an action *in personam*, the writ of summons shall be served by showing it to the defendant, and by leaving with him a copy of the writ. Service in action in personam.

13. A writ of summons against a firm may be served upon any member of the firm, or upon any person appearing at the time of service to have the management of the business of the firm. Upon member or manager of a firm.

14. A writ of summons against a corporation may be served upon the mayor, or other head officer, or upon the town clerk, clerk, treasurer or secretary of the corporation, and a writ of summons against a public company may be served upon the secretary of the company, or may be left at the office of the company. Upon a corporation or, &c.
Upon mayor or, &c.

15. A writ of summons against a corporation or a public company may be served in any other mode provided by law for service of any other writ or legal process upon such corporation or company. Or in other mode, &c.

(a) *The Donorthorp*, 2 W. Rob. 80.

(b) *The Cassiopeia*, 4, P. D. 188, C. A.

Rules 16-20.

If person to be served is under disability, or, &c.

16. If the person to be served is under disability, or if for any cause personal service cannot, or cannot promptly, be effected, or if in any action, whether *in rem* or *in personam*, there is any doubt or difficulty as to the person to be served, or as to the mode of service, the judge may order upon whom, or in what manner service is to be made, or may order notice to be given in lieu of service.

Writ may be served by plaintiff or his agent within 12 months.

17. The writ of summons, whether *in rem* or *in personam*, may be served by the plaintiff or his agent within *twelve months* from the date thereof, and shall, after service, be filed with an affidavit of such service.

Affidavit of service.

18. The affidavit shall state the date and mode of service and shall be signed by the person who served the writ. A form of affidavit of service will be found in the appendix hereto, No. 11.

Undertaking in lieu of service.

19. No service of a writ or warrant shall be required when the defendant by his solicitor undertakes in writing to accept service thereof and enter an appearance thereto, or to put in bail, or to pay money into court in lieu of bail; and any solicitor not entering an appearance or putting in bail or paying money into court in lieu of bail in pursuance of his written undertaking so to do, shall be liable to attachment.

SERVICE OUT OF JURISDICTION.

Service out of jurisdiction.

20. Service out of the jurisdiction of a writ of summons, or notice of a writ of summons, may be allowed by the judge whenever:—

- (a) Any relief is sought against any person domiciled or ordinarily resident within the territorial jurisdiction of the court;

Rule 21.

- (b) The action is founded on any breach or alleged breach within the territorial jurisdiction of the court of any contract wherever made, which according to the terms thereof ought to be performed within such jurisdiction;
- (c) Any injunction is sought as to anything to be done within the territorial jurisdiction of the court.
- (d) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within such territorial jurisdiction.

21. Every application for leave to serve a writ of summons, or notice of a writ of summons, on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the judge that the case is a proper one for service out of the jurisdiction.

A writ of summons will not be allowed to be served out of the jurisdiction unless the cause of action has arisen within the territorial jurisdiction (c).

It was held, under the English rule, as to service out of the jurisdiction in an action *in personam* for alleged salvage services rendered to ship, freight and

(c) *The City of Mecca*, 45 L. J. Ad 92; 1 P. D. 300; *The Vivar*, 2 P. D. 29; 35 L. T. N. S. 782.

Rules 22-25. cargo, the plaintiffs, the owners, master and crew of the salving vessel having served the writ upon the owners of the salved ship, resident within the jurisdiction, leave might be obtained to serve the cargo owners, out of the jurisdiction with notice of the writ (*d*).

Order to limit
time for
appearance.

22. Any order giving leave to effect such service, or give such notice, shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country, where or within which, the writ is to be served or the notice given.

Defendant
neither a Brit-
ish subject
nor, &c.

23. When the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him. A form of notice will be found in the appendix hereto, No. 8.

Notice in lieu
of service.

24. Notice in lieu of service shall be given in the manner in which writs of summons are served.

APPEARANCE.

Appearance to
be filed.

25. A party appearing to a writ of summons shall file an appearance at the place directed in the writ.

Appearance
under protest.

If the defendant considers that the court has no jurisdiction over the subject-matter of the action, the English practice is that he may appear under protest, according to A. C. R., 1859, r. 3: "If the solicitor intends to object to the jurisdiction of the court the appearance may be entered under protest." The memorandum of appearance should in that case bear the words "under protest" on it (*e*).

As a general rule not merely the legal owner, but any person having any title to the property proceeded against, might appear and defend *pro interesse suo*. But if several

(*d*) The *Elton*, 1891, P. 265.

(*e*) Wms. & B. 2nd ed. 266-7; see *The Seward*, 3 E. C. Rep. Can. 264.

defendants having the same interest in the property entered separate appearances, the court would endeavour to protect the plaintiffs against unnecessary costs (*f*). Rules 26, 27.

A mortgagee may appear (*g*), and the trustee of a bankrupt (*h*), and underwriters (*i*). The master of the ship might always appear in the capacity of agent for the owner (*j*). And it would seem the agent of the owner on his own behalf; and the agent of absent owners either in his own name as agent, or in the name of his principals (*k*). The owners of a ship which has been found to blame in a collision suit may appear in an action of salvage against the injured and salved ship, and if they put in bail in lieu of the latter, may conduct the defence, whilst the bail of the salved ship will be discharged (*l*). So also may the owners of cargo in a wages suit against ship and freight, where the claimants desire to be preferred to bottomry bondholders, since the result may cause the latter to have a claim against the cargo (*m*).

26. A party not appearing within the time limited by the writ may, by consent of the other parties or by permission of the judge, appear at any time on such terms as the judge shall order. Appearance on terms on expiry of time.

27. If the party appearing has a set-off or counter-claim against the plaintiff, he may indorse on his appearance a statement of the nature thereof, and of the relief or remedy required, and of the amount, if any, of the set-off or counter-claim. But if in the opinion of the judge such set-off or counter-claim cannot be conveniently disposed of in the action, the judge may order it to be struck out. Indorsement of set-off or counterclaim on appearance.

(*f*) *The Nicolina*, 2 W. Rob. 176.

(*g*) *The Julinder*, Spk. 75.

(*h*) *The Dowthorpe*, *supra*.

(*i*) *The Regina del Mare*, Br. & Lush. 315; and Rule 31 *infra*.

(*j*) Wms. & B. 259*n*.

(*k*) *Ibid*.

(*l*) *The Diana*, 31 L. T. N. S. 203.

(*m*) *The Union*, Lush. 128; 30 L. J. Ad. 19.

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Can. 264.

Rules 28-30.

Address for
service to be
indorsed on
appearance.

28. The appearance shall be signed by the party appearing, and shall state his name and address, and an address, to be called an address for service, not more than three miles from the registry, at which it shall be sufficient to leave all documents required to be served upon him. Forms of appearance and of indorsement of set-off or counter-claim will be found in the appendix hereto, Nos. 12 and 13.

PARTIES.

Number of
persons may
be joined.

29. Any number of persons having interests of the same nature arising out of the same matter may be joined in the same action whether as plaintiffs or as defendants.

Adding a per-
son interested.

30. The judge may order any person who is interested in the action, though not named in the writ of summons, to come in either as plaintiff or as defendant.

The English Rule as to intervening, is not reproduced here, but by this rule the same end will be attained. The English rule, and practice, is that: "In an Admiralty action, *in rem*, any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the *res* under arrest or in the fund in the registry" (*n*). Thus, it is held that the following might come in:—a mortgagee (*o*), a trustee of a bankrupt (*p*), and the owners of cargo (*q*).

A charterer being generally, *pro hac vice*, owner of the vessel, is properly a party to an action for salvage (*r*), and the representative of a foreigner lost at sea in an action of damage (*s*).

(*n*) Wms. & B. 259.

(*o*) *The Julinder*, Spk. 75.

(*p*) *The Douthorpe*, 2 W. Rob. 73, 77.

(*q*) Wms. & B. 259.

(*r*) *The Bowesfield*, 51 L. T. 128; see also notes to Rule 25, *ante*.

(*s*) *The Scout*, L. R. 3 Ad. 512; 41 L. J. Ad. 42.

The court will not add parties so as to turn an action Rules 31-33.
in rem into an action in personam (t).

As to practice where infants and others under disabilities are interested, *vide ante*.

31. For the purposes of the last preceding rule an underwriter or insurer shall be deemed to be a Underwriter deemed a person interested. person interested in the action.

It has been held that underwriters might intervene under the English rule cited in preceding note (v).

32. The judge may order upon what terms any person shall come in, and what notices and documents, if any, shall be given to and served upon him, and may give such further directions in the matter as to him shall seem fit. Terms upon which person may be made a party.

In an action for damage by collision brought by a vessel at anchor against a vessel in tow of a tug, the owners of the tug were made third parties, as the defendants claimed to be indemnified by them against the plaintiff's claim, on the ground that the improper navigation, if any, was that of the tug. An application for direction was subsequently made, and it was held that the third parties must be dismissed, as questions would probably arise between them and the defendants by which the plaintiffs might be embarrassed, different from those upon which the action between the plaintiffs and defendants would turn (v).

In *The Annandale* (w) and in *The Native Pearl* (x) the owner was served with notice of the proceedings.

CONSOLIDATION OF ACTIONS.

33. Two or more actions in which the questions at issue are substantially the same, or for matters which might properly be combined in one action, Action may be consolidated.

(t) *The Explorer*, L. R. 3 Ad. 289; 40 L. J. Ad. 41.

(u) *The Regina del Mare*, Br. & Lush. 315.

(v) *The Bianca*, 8 P. D. 90.

(w) 37 L. T. N. S. 364.

(x) 37 L. T. N. S. 542.

Rules 34, 35. may be consolidated by order of the judge upon such terms as to him shall seem fit.

To afford ground for consolidation, the actions must depend on the same facts, though, as regards salvage actions, the court has a somewhat wider power (*y*). The court after having consolidated, can sever the actions if necessary (*z*), and such consolidation may take place either on the application of the plaintiffs or defendants (*a*). Upon consolidation it is usual to give the conduct to the plaintiff in the first action with leave to the other plaintiffs to deliver separate statements of claim (*b*).

The court will refuse to consolidate cross actions of damage *in personam* where there has been no service of the writ in the principal action (*c*).

In a case where two actions were instituted on behalf of plaintiffs, having adverse interests against the same vessel, to recover salvage reward in respect of services rendered on the same occasion, the court, on the plaintiffs refusing to consent to a consolidation order, allowed the defendants to make a single tender in respect of the claims in both actions (*d*).

Several actions
may be tried
at same time.

34. The judge, if he thinks fit, may order several actions to be tried at the same time, and on the same evidence, or the evidence in one action to be used as evidence in another, or may order one of several actions to be tried as a test action, and the other actions to be stayed to abide the result.

Test action.

WARRANTS.

Warrant in an
action *in rem*.

35. In an action *in rem*, a warrant for the arrest of property may be issued by the registrar at the

(*y*) *The William Hutt*, Lush. 25.

(*z*) *The William Hutt*, ante; and Wms. & B. 389.

(*a*) *The Melpomene*, L. R. 4 Ad. 129; 29 L. T. N. S. 405.

(*b*) *The Cosmopolitan*, 9 P. D. 35*n*; *The Bjorn*, ib. 36*n*.

(*c*) *The Helenslea*;—*The Catalonia*, 7 P. D. 57.

(*d*) *The Jacob Lundstrom*, 4 P. D. 191 (one set of costs); *The Pasithea*, 5 P. D. 5; *The Longford*, 6 P. D. 60.

time of, or at any time after, the issue of the writ of Rules 36, 37.
summons, on an affidavit being filed, as prescribed
by the following rules. A form of affidavit to lead
warrant will be found in the appendix hereto, No.
14.

The English Admiralty Court Rules, 1859, r. 8, required
the filing of a praecipe as well as an affidavit: and such is
now the practice in the High Court in Admiralty (e).

If an arrest is made in bad faith, or with gross negli-
gence, or if it be continued longer than is necessary, the
owner of the vessel is entitled to ask the court for damages
in respect of such arrest (f).

Queen's ships are not liable to arrest. When such a
vessel is to be proceeded against the practice in England is
for the registrar or the plaintiff's solicitor to inform the
Lords of the Admiralty of the fact, and the Admiralty
Proctor there enters an appearance (g).

36. The affidavit shall state the nature of the Affidavit to
state nature of
claim, &c.
claim, and that the aid of the court is required.

37. The affidavit shall also state:—

Also:—

(a) In an action for wages, or possession, the in action for
wages, or, &c.
national character of the ship, and if
the ship is foreign, that notice of the
action has been served upon a consular
officer of the State to which the ship
belongs, if there is one resident in the
district within which the ship is at the
time of the institution of the suit; and
a copy of the notice shall be annexed
to the affidavit;

This provision corresponds with the English Admiralty
Rule.—Ord. V. r. 16 (h).

(e) Wms. & B. 2nd ed. 244.

(f) *The Volant*, Br. & L. 321; *The Cheshire Witch*, Ib. 362; *The Evan-
gelismos*, Sw. 378; *The Margaret Jane*, L. R. 2 Ad. 345.

(g) *The Comus*, 2 Dods. 464; *The Athol*, 1 W. Rob. 374.

Rules 38-40.

*in action for
necessaries,*

(b) In an action for necessaries, the national character of the ship, and that, to the best of the deponent's belief, no owner or part owner of the ship was domiciled within Canada at the time when the necessaries were supplied ;

*or building.
&c.:-*

(c) In an action for building, equipping, or repairing any ship, the national character of the ship and that at the time of the institution of the action, the ship, or the proceeds thereof, are under the arrest of the court ;

*in action
between co-
owners.*

(d) In an action between co-owners relating to the ownership, possession, employment, or earnings of any ship registered in such district, the port at which the ship is registered and the number of shares in the ship owned by the party proceeding.

*In an action
for bottomry.*

38. In an action for bottomry, the bottomry bond in original, and, if it is in a foreign language, a translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

*Issue of war-
rant though
affidavit does
not contain all
the prescribed
particulars.*

39. The registrar, if he thinks fit, may issue a warrant, although the affidavit does not contain all the prescribed particulars, and, in an action for bottomry, although the bond has not been produced; or he may refuse to issue a warrant without the order of the judge.

*Warrant,
where pre-
pared and by
whom signed.*

40. The warrant shall be prepared in the registry, and shall be signed by the registrar, and issued

under the seal of the court. A form of warrant will be found in the appendix hereto, No. 15. Rule 41.

41. The warrant shall be served by the marshal, or his officer, in the manner prescribed by these rules for the service of a writ of summons in an action *in rem*, and thereupon the property shall be deemed to be arrested. To be served by marshal or his officer.

For manner of service of writ see Rule 10.

After the arrest the marshal is liable for the safe custody of the matter arrested (*i*); and any person who interferes with, or carries away the property, is liable to an attachment for contempt (*j*).

A warrant against a ship extends to her sails and rigging ashore or detached (*k*), and to other things of a like kind appurtenant to the ship (*l*), but not to passengers' wearing apparel and personal luggage (*m*).

The freight itself cannot be arrested, but when it remains unpaid the cargo can be arrested as representing it (*n*). Nor can the cargo be arrested in a damage suit, except as representing freight (*o*). But the usual way of proceeding against the freight is to move the judge to issue an order commanding those from whom the freight is due to pay the money into court. The freight due on the whole of the cargo on board at the time a lien attaches is payable as well as on that part which is on board at the time of the arrest (*p*).

When the marshal sends by telegram to his substitute at an out port notice of the issue of a warrant, and such substitute communicates it to the master of the ship against Warrant, service by telegram.

(i) *The Hoop*, 4 C. Rob. 145.

(j) *The Petrel*, 3 Hagg. 229.

(k) *The Alexander*, 1 Dods. 282.

(l) *Wms. & B.* 2nd ed., 250.

(m) *The Willem III.*, 3 L. R. Ad. 487; 25 L. T. N. S. 356.

(n) *The Leo*, 31 L. J. Ad. 78; 6 L. T. N. S. 58; *The Roediff*, L. R. 2 A. & E. 363.

(o) *The Flora*, L. R. 1 Ad. 45.

(p) *The Roediff*, L. R. 2 Ad. 363; 38 L. J. Ad. 56.

Rules 42-45. which it is issued, it is a contempt of court to move the ship from the place where it is lying (*q*).

Service on
Sunday, or, &c.

42. The warrant may be served on Sunday, Good Friday or Christmas Day, or any public holiday, as well as on any other day.

Warrant to be
filed by mar-
shal, with, &c.

43. The warrant shall be filed by the marshal within *one week* after service thereof has been completed, with a certificate of service indorsed thereon.

Certificate of
service.

44. The certificate shall state by whom the warrant has been served, and the date and mode of service, and shall be signed by the marshal. A form of certificate of service will be found in the appendix hereto, No. 16.

The lien of the plaintiff in an action *in rem* takes effect from the moment of arrest of the ship (*r*).

BAIL.

Bail, how to be
given.

45. Whenever bail is required by these rules, it shall be given by filing one or more bailbonds, each of which shall be signed by two sureties, unless the judge shall, on special cause shown, order that one surety shall suffice.

As a general rule bail is required to the amount of the claim (*s*), and a sum to cover costs (*t*). If the amount of the costs, with or without damages, exceeds the sum for which bail has been given, the court will order the re-arrest of the ship for the satisfaction of such costs (*u*). In actions of restraint the bond is for the safe return of the ship (*v*).

(*q*) *The Scatglia*, L. R. 10 P. D. 120.

(*r*) *The Cella*, 13 P. D. 82.

(*s*) *The St. Olaf*, L. R. 2 Ad. 360; 38 L. J. Ad. 41.

(*t*) Wms. & B. 2nd ed., 285.

(*u*) *The Freedom*, L. R. 3 Ad. 495; 41 L. J. Ad. 1.

(*v*) ROSCOE Ad. Pr. 50; See note to rule 52, *infra*.

Vessels may be released in actions of damage, when bail is given to the amount of the statutory liability upon an affidavit as to tonnage and non-privy of owners (*w*). Rules 46-51.

46. Every bailbond shall be signed before the registrar, or by his direction before a clerk in the registry, or before a commissioner having authority to take acknowledgments or recognizances of bail in the court, or before a commissioner appointed by the court, to take bail. Forms of bailbond and commission to take bail will be found in the appendix hereto, Nos. 17 and 18. Bailbond to be signed before registrar, or, &c.

47. The sureties shall justify by affidavit and may attend to sign a bond either separately or together. A form of affidavit of justification will be found in the appendix hereto, No. 19. Sureties to justify.

48. The commission to take bail and the affidavits of justification shall, with the bailbond, when executed, be returned to the registry by the commissioner. Commission to take bail.

49. No commissioner shall be entitled to take bail in any action in which he, or any person in partnership with him, is acting as solicitor or agent. Not to be taken by solicitor, or, &c.

50. Before filing a bailbond, notice of bail shall be served upon the adverse party, and a certificate of such service shall be indorsed on the bond by the party filing it. A form of notice of bail will be found in the appendix hereto, No. 20. Notice served on adverse party

51. If the adverse party is not satisfied with the sufficiency of any surety, he may file a notice of objection to such surety. A form of notice of objection to bail, will be found in the appendix hereto No. 21. Objection to surety.

(*w*) (See Statute in Appendix as to limitation of liability.)

Rules 52, 53.

Groundless objections to bail expose the party taking them to damages and costs (*x*).

Appointment to consider objection.

52. Upon such objection being filed with the registrar an appointment may be obtained for its consideration before him. Twenty-four hours' notice of such appointment shall be given to the plaintiff unless the judge for special reasons allows a shorter notice to be given; and, on the return of the appointment, the registrar may hear the parties and any evidence they may adduce regarding the sufficiency of the sureties; and he may direct such sureties to submit themselves to cross-examination on their affidavits of justification; and he may allow or disallow the bond. He may adjourn the appointment from time to time if he thinks necessary, and shall himself make such inquiries respecting the sureties as he thinks fit.

Registrar may allow or disallow bond.

Exorbitant sum.—A ship was arrested, and bail required for an exorbitant sum: it was held that the plaintiff's must pay the costs and expenses incurred by the defendants in giving this bail (*y*).

Restraint.—In an action of restraint the bail bond should not be to pay what may be adjudged against the defendant in an action, but simply for the appraised or agreed value of the plaintiff's shares, in case the ship does not return to the particular port named in the bond (*z*).

When an action is settled by agreement, or where a tender has been accepted, application may be made in chambers to dismiss the bail (*a*).

RELEASES.

Release for property arrested.

53. A release for property arrested by warrant may be issued by order of the judge.

(*x*) Wms. & B. 2nd ed., 291.

(*y*) *The George Gordon*, 9, P. D. 46.

(*z*) *The Robert Dickinson*, 10 P. D. 15; and see *The Virienne*, 12 P. D. 185.

(*a*) Wms. & B. 287.

54. A release may also be issued by the registrar, unless there is a caveat outstanding against the release of the property,—

Rules 54, 55.

When it may be issued from registry:—

- (a) On payment into court of the amount claimed, or of the appraised value of the property arrested, or, where cargo is arrested for freight only, of the amount of the freight verified by affidavit; on payment into court;
- (b) On one or more bailbonds being filed for the amount claimed, or for the appraised value of the property arrested, and on the allowance of the same if objected to; or if not objected to on proof that *twenty-four hours'* notice of the names and addresses of the sureties has been previously served on the party at whose instance the property has been arrested; on bail bond being filed;
- (c) On the application of the party at whose instance the property has been arrested; on application of party, &c.
- (d) On a consent in writing being filed signed by the party at whose instance the property has been arrested; on consent in writing;
- (e) On discontinuance or dismissal of the action in which the property has been arrested. on discontinuance, or, &c.

55. Where property has been arrested for salvage, the release shall not be issued under the foregoing rule, except on discontinuance or dismissal of the action, until the value of the property arrested has been agreed upon between the parties or determined by the judge. Property arrested for salvage.

By the practice in Admiralty in England, in a cause of salvage the value of the property under arrest is agreed upon or an affidavit of value filed before the property is released. A. C. R. 50 (1859) and Ord. XXIX. r. 6. Generally the

Rules 56-60. value shown by affidavit is conclusive. But if the salvors are not satisfied they may have an official appraisal (b).

Registrar may refuse. 56. The registrar may refuse to issue a release without the order of the judge.

Preparation and issue of release. 57. The release shall be prepared in the registry, and shall be signed by the registrar, and issued under the seal of the court. A form of release will be found in the appendix hereto, No. 22.

Release, how served. 58. The release shall be served on the marshal, either personally, or by leaving it at his office, by the party by whom it is taken out.

Property released from arrest on service of release, &c. 59. On service of the release and on payment to the marshal of all fees due to, and charges incurred by, him in respect of the arrest and custody of the property, the property shall be at once released from arrest (c).

PRELIMINARY ACTS.

Preliminary Acts. 60. In an action for damage by collision, each party shall, within *one week* from an appearance being entered, file a Preliminary Act, sealed up, signed by the party, and containing a statement of the following particulars:—

Contents.

In the requirement of a Preliminary Act the English practice is here followed (d). But there is one more particular here, viz., (14), than in the English formula (e).

Names. (1) The names of the ships which came into collision, and the names of their masters;

(b) See *The James Armstrong*, L. R. 4 Ad. 380; *The Betsy*, 5 C. Rob. 296; *The Hanna*, 37 L. T. N. S. 364.

(c) As to liability for delaying release see *The Corner*, Br. & L. 161; 12 L. T. N. S. 62; and Rule 185, *infra*.

(d) Wms. & B. 2nd ed., 366.

(e) Smith's Ad. Prac., 4th ed. (1892), 146.

- | | <u>Rule 60.</u> |
|--|----------------------------|
| (2) The time of the collision ; | Time. |
| (3) The place of the collision ; | Place. |
| (4) The direction and force of the wind ; | Wind. |
| (5) The state of the weather ; | Weather. |
| (6) The state and force of the tide, or, if the collision occurred in non-tidal waters, of the current ; | Tide. |
| (7) The course and speed of the ship when the other was first seen ; | Course and speed. |
| (8) The lights, if any, carried by her ; | Lights. |
| (9) The distance and bearing of the other ship when first seen ; | Distance and bearing. |
| (10) The lights, if any, of the other ship which were first seen ; | Lights first seen. |
| (11) The lights, if any, of the other ship, other than those first seen, which came into view before the collision ; | Other lights. |
| (12) The measures which were taken, and when, to avoid the collision ; | Measures taken. |
| (13) The parts of each ship which first came into collision ; | Parts first collided with. |
| (14) What fault or default, if any, is attributed to the other ship. | Fault or default. |

The object of the Preliminary Act is to have the leading circumstances of the collision placed in a formal documentary shape whilst fresh in the recollection of the parties; any application, therefore, to amend the Act must be made at once, and no amendment will be allowed at the hearing (*f*).

Article 9.—To this article the statement on behalf of the defendants was:—"The *Lobelia* when first seen was at anchor." Upon application of plaintiffs it was ordered

(*f*) *The Vortigern*, Swa. 515 ; *The Frankland*, L. R. 3 Ad. 511 ; 41 L. J. Ad. 3.

Rules 61-63. to be amended, which was done by the addition of the words: "distant about two miles nearly ahead, but on the port bow withal" (*g*).

Preliminary Acts are only required in actions of damage caused by collision between ships; and not where an action is brought by some one other than the owner of the injured vessel, as by the owner of cargo laden on board a ship, against that ship for damage caused by collision with another vessel (*h*). But they were held to be necessary in an action under Lord Campbell's Act for the death of a seaman on board caused by a collision (*i*).

The court will not allow a party to contradict his preliminary Act at the hearing (*j*).

PLEADINGS.

No pleadings,
when.

61. Every action shall be heard without pleadings, unless the judge shall otherwise order.

Statement of
claim, defence
and reply to
be filed within
one week in
each case.

62. If an order is made for pleadings, the plaintiff shall, within *one week* from the date of the order, file his statement of claim, and, within *one week* from the filing of the statement of claim, the defendant shall file his statement of defence, and within *one week* from the filing of the statement of defence the plaintiff shall file his reply, if any; and there shall be no pleading beyond the reply, except by permission of the judge.

Defendant
may plead set-
off or counter-
claim.

63. The defendant may, in his statement of defence, plead any set-off or counter claim. But if, in the opinion of the judge, such set-off or counter-claim cannot be conveniently disposed of in the action, the judge may order it to be struck out.

(*g*) *The Godiva*, 11 P. D. 20.

(*h*) *The John Boyne*, 36 L. T. N. S. 29; 25 W. R. 756.

(*i*) Wms. & B. 2nd ed., 367.

(*j*) *The Vortigern*, Swab. 518.

The limitation of liability under M. S. Act, 1862, s. 54, can be claimed by counter-claim (*k*). Though it has been held that it may be properly pleaded as a partial ground of defence (*l*)

Rule 64.

The set-off claimed must be connected with the original cause of action (*m*).

The court has jurisdiction by 24 V. c. 10, s. 34, to order a plaintiff in an action for damage by collision to give security for damages to a defendant who brings a counter-claim. It may exercise this power when such plaintiff is a foreign sovereign whose ship cannot be arrested (*n*).

Counter-claim.
Security.

64. Every pleading shall be divided into short paragraphs, numbered consecutively, which shall state concisely the facts on which the party relies; and shall be signed by the party filing it. Forms of pleadings will be found in the appendix hereto, No. 23.

Paragraphs to
be numbered,
&c.

A fact is not to be implied from a general allegation, but to be distinctly stated (*o*).

A statement of claim in a salvage action omitted to allege that there was any risk to life, or what plaintiffs would say as to the state of the sea or weather, or whether there was any, and what degree of danger. On motion by defendants for a further and better statement of claim or particulars, it was held that the plaintiff must deliver a fuller statement of claim (*p*).

It has been held in the High Court, England, that the rule as to giving the opposite party particulars of any general allegation in pleadings ought to be the same in Admiralty as in the Q. B. Division. Where, therefore, in an action in the Admiralty Division by cargo owners against ship owners for delivery of cargo in a

Particulars

(*k*) *The Clutha*, 45 L. J. Ad. 108; 35 L. T. N. S. 36.

(*l*) *Wahlberg v. Young*, 45 L. J. C. P. D. 783.

(*m*) *Padwick v. Scott*, L. R. 2 Ch. D. 736.

(*n*) *The Newcastle*, 10 P. D. 33 C. A.

(*o*) *The Marpesia*, L. R. 4 P. C. 212; 26 L. T. N. S. 333.

(*p*) *The Isis*, 8 P. D. 227.

Rules 65-67. damaged condition, the statement of claim alleged that the damage was not occasioned by any of the excepted perils mentioned in the bill of lading under which the cargo had been shipped, but was occasioned by the defective condition of the vessel or by the negligence or breach of duty of the defendants or their servants, it was held that the defendants were entitled to particulars of the defects rendering the vessel not fit to carry the cargo (*q*).

A demand for particulars may be allowed where particulars are sought of damage to cargo for the purpose of admitting some liability, and of damage to a ship which has been totally lost at sea (*r*).

Where a suit is brought for master's wages and disbursements the plaintiff is bound to furnish accounts before bringing such an action (*s*).

As to setting out words of document.

65. It shall not be necessary to set out in any pleading the words of any document referred to therein, except so far as the precise words of the document are material.

Questions of fact or law raised may be decided forthwith.

66. Either party may apply to the judge to decide forthwith any question of fact or of law raised by any pleading, and the judge shall thereupon make such order as to him shall seem fit.

Amendment of pleading.

67. Any pleading may at any time be amended, either by consent of the parties, or by order of the judge.

A further and better statement of the nature of the claim or defence, or further and better particulars of any matters stated in any pleading, may in all cases be ordered by the court or judge upon such terms as to costs as may be just (*t*).

(*q*) *The Rory*, 7 P. D. 17, C. A.

(*r*) *The Wetterhorn*, 34 L. T. N. S. 587; 24 W. R. 324; *The N. P. Neilson*, 34 L. T. N. S. 588; 24 W. R. 324. But see *The Freedom*, L. R. 2 Ad. 346.

(*s*) *The Fleur de Lis*, L. R. 1 Ad. 39.

(*t*) Wms. & B. 2nd ed., 350.

The court may order a pleading to be partially amended or to be wholly struck out according as it thinks just (*u*). Rule 68.

INTERROGATORIES.

68. At any time before the action is set down for hearing any party, desirous of obtaining the answers of the adverse party on any matters material to the issue, may apply to the judge for leave to administer interrogatories to the adverse party to be answered on oath, and the judge may direct within what time and in what way they shall be answered, whether by affidavit or by oral examination. Leave to administer interrogatories. When and how to be obtained

If strong reasons are given, interrogatories may be allowed before the delivery by the defendant of his statement of defence; *e. gr.*, where defendant appeared and stated that he was improperly sued as one of the owners of the ship (*v*). In collision actions, interrogatories ought not to seek information which should be disclosed by the Preliminary Act. (*w*). Interrogatories

Interrogatories ought to be such as tend *bona fide* to support the case of the interrogator and to favour a complete inquiry into the truth of the issue which is before the court (*x*).

In an action of damage arising out of a collision in which the plaintiff's vessel was lost, with all of the crew who could give evidence as to the collision, the plaintiffs were allowed to administer interrogatories to the owners of defendant's vessel as to the circumstances of the collision (*y*).

See notes to Rule 88, *infra*.

(*u*) *The Antelope*, 4 L. R. Ad. 33; *The Cybele*, 37 L. T. N. S. 165.

(*v*) *The Murrilo*, 28 L. T. N. S. 374.

(*w*) *The Bida*, 34 L. T. N. S. 185; 24 W. R. 521; *sed vide*, *The Radnorshire*, 5 P. D. 172.

(*x*) *The Mary Alexandria*, L. R. 2 Ad. 312; 18 L. T. N. S. 891.

(*y*) *The Isle of Cyprus*, 15 P. D. 134.

Rules 69-73.

Objectionable
interrogatory
may be
amended or
struck out.

69. The judge may order any interrogatory that he considers objectionable to be amended or struck out; and if the party interrogated omits to answer or answers insufficiently, the judge may order him to answer, or to answer further, and either by affidavit or by oral examination. Forms of interrogatories and of answers will be found in the appendix hereto, Nos. 24 and 25.

DISCOVERY AND INSPECTION.

Discovery on
oath, how
obtained.

70. The judge may order any party to an action to make discovery, on oath, of all documents which are in his possession or power relating to any matter in question therein.

Affidavit of
discovery.

71. The affidavit of discovery shall specify which, if any, of the documents therein mentioned the party objects to produce. A form of affidavit of discovery will be found in the appendix hereto, No. 26.

Notice to pro-
duce for in-
spection or
transcription.

72. Any party to an action may file a notice to any other party to produce, for inspection or transcription, any document in his possession or power relating to any matter in question in the action. A form of notice to produce will be found in the appendix hereto, No. 27.

Order to pro-
duce, how
obtained.

73. If the party served with notice to produce omits or refuses to do so within the time specified in the notice, the adverse party may apply to the judge for an order to produce.

In the case of a foreign owner of a ship the time is to be a reasonable time according to distance and other circumstances (z).

If a party makes application for an order without first complying with rule 72, or requesting the opposite party

(z) *The Emma*, 34 L. T. N. S. 742.

to give him inspection, he is liable to be condemned in the costs of the motion (a). An affidavit in support of such an application should state as distinctly as possible of what documents inspection is sought (b). Rules 74-77.

ADMISSION OF DOCUMENTS AND FACTS.

74. Any party may file a notice to any other party to admit any document or fact (saving all just exceptions), and a party not admitting it after such notice shall be liable for the costs of proving the document or fact, whatever the result of the action may be, unless the taxing officer is of opinion that there was sufficient reason for not admitting it. Forms of notice to admit will be found in the appendix hereto, Nos. 28 and 29. Notice to admit document or fact may be filed.

75. No costs of proving any document shall be allowed, unless notice to admit shall have been previously given, or the taxing officer shall be of opinion that the omission to give such notice was reasonable and proper. No costs unless notice be given.

SPECIAL CASE.

76. Parties may agree to state the questions at issue for the opinion of the judge in the form of a special case. Special case by agreement

77. If it appears to the judge that there is in any action a question of law which it would be convenient to have decided in the first instance, he may direct that it shall be raised in a special case or in such other manner as he may deem expedient. Question of law may be raised in special case.

A question of law was tried without pleadings or admissions, and without a special case, upon the documents

(a) *The Memphis*, L. R. 3 Ad. 23; 18 W. R. 74.

(b) *The Cordelia*, 28 L. T. N. S. 776.

Rules 78-83. in an action on a policy of insurance on chartered freight; the judge having so ordered under the English rule corresponding to this (c).

Paragraphs, &c.

78. Every special case shall be divided into paragraphs, numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the question at issue.

Signed by parties.

79. Every special case shall be signed by parties, and may be filed by any party.

MOTIONS.

Notice of motion

80. A party desiring to obtain an order from the judge shall file a notice of motion with the affidavits, if any, on which he intends to rely.

The practice in the Admiralty Division of the High Court (Eng.), is not only to file the notice of motion, but in defended cases, a copy of the notice of motion, together with the affidavits, if any, must, before filing the originals, be served on the adverse party at the address for service, or on his solicitor (*dl*).

What notice of motion shall state.

81. The notice of motion shall state the nature of the order desired, the day on which the motion is to be made, and whether in court or in chambers. A form of notice of motion will be found in the appendix hereto, No. 30.

In the Admiralty Division of the High Court (Eng.), no motion is made to the judge in court save by counsel, or by a party in person (*ddl*).

When notice shall be filed.

82. Except by consent of the adverse party, or by order of the judge, the notice of motion shall be filed *twenty-four hours* at least before the time at which the motion is made.

(c) *The Alps*, 1893, P. 100.

(d) *Wms & B.*, 2nd ed., 503; *Smith's Ad. Prac.*, 4th ed., 133.

(ddl) *Wms. & B.*, 2nd ed., 574.

83. When the motion comes on for hearing, Rules 84, 85.
the judge, after hearing the parties, or, in the
absence of any of them, on proof that the notice of
motion has been duly served, may make such order
as to him shall seem fit.

84. The judge may, on due cause shown, vary Power to vary
or rescind.
or rescind any order previously made.

TENDERS.

85. A party desiring to make a tender in satisfac- Tenders.
Payment into
court and
filing of notice
of tender.
tion of the whole or any part of the adverse
party's claim, shall pay into court the amount
tendered by him, and shall file a notice of the
terms on which the tender is made. But the pay-
ment of money into court shall not be deemed an
admission of the cause of action in respect of which
it is paid.

It was formerly held that a tender to be good must
include a tender of costs up to the time of the tender (e);
adding to the notice the words: "The defendant also
agrees to pay the plaintiff's taxed costs up to the time of
this tender," or to the same effect. But any reference to
costs in the tender is apparently no longer necessary (f);
though proper in all ordinary actions. A valid tender may
be made reserving the question of costs (g). The above
rule 85 requires, as does the High Court (Eng.) Ad. prac-
tice the party making the tender to pay the amount
tendered into court. And a plea of tender is bad unless
the amount pleaded as tendered is so paid into court (h).

If the plaintiff accepts the tender the action is at an
end, unless it is necessary to apply to court for directions
as to the costs, and the money will be paid out of court in
the usual manner (hh).

(e) *The John*, Lush. 11. 13.

(f) *The William Squington*, 10 P. D. 1.

(g) *The Hickman*, L. R. 3 A. & E. 15.

(h) *The Nasmyth*, 10 P. D. 41.

(hh) Wms. & B. 405.

Rules 86-88.

If he does not accept, he gives the notice provided for in Rule 86, and alleges in his reply that the tender is insufficient; the defendant having alleged the tender in his statement of defence, and the action proceeds to a hearing (i).

In salvage actions it is usual, before tender is made in court, for the defendant's solicitor to make a tender to the plaintiff out of court. If the plaintiff accepts the tender thus made, the matter may be settled by the parties out of court. But the plaintiff, if he is entitled to costs, should, before discontinuing proceedings, stipulate for payment of the costs, or apply to the court to give directions as to costs (ii). If the plaintiff refuses to accept the tender thus made, the defendant may then, as in other cases, proceed to tender by act in court, paying the amount tendered into court and giving the formal written notice as provided by Rule 85.

In salvage actions, where a tender is made, the plaintiff has a right to have the value of the property ascertained before he can be called upon to reply to the tender (j).

The offer of a sum in respect of salvage services should not include any sum in respect of plaintiff's costs (jj).

Filing of
notice by ad-
verse party,
accepting or
rejecting.

86. Within a week from the filing of the notice the adverse party shall file a notice, stating whether he accepts or rejects the tender, and if he shall not do so, he shall be held to have rejected it. Forms of notice of tender and of notice accepting or rejecting it will be found in the appendix hereto, Nos. 31 and 32.

Proceedings
suspended.

87. Pending the acceptance or rejection of a tender, the proceedings shall be suspended.

EVIDENCE.

Modes of giv-
ing evidence.

88. Evidence shall be given either by affidavit or by oral examination, or partly in one mode, and partly in another.

(i) Wms. & B. 405.

(ii) Wms. & B. 2nd ed., 403.

(j) *Ibid* 405n.

(jj) *The William Symington*, *sup.*

Evidence by affidavit is received in the following matters:—In actions for limitation of liability, where the defendant only puts the plaintiff to proof of his case, without raising any special defence, the course of practice is, the solicitors for the parties usually consenting, or a judge's order being obtained under Rule 89, for the entire evidence in the cause to be given on affidavit. And in other contested actions there are certain matters which, in whatever mode the remainder of the evidence in the action be taken, are in practice proved by affidavit. Thus, in an action of salvage, the value of the property proceeded against is, in the absence of any appraisement, proved by defendant's affidavits of value. In England, in actions of damage or actions of salvage, copies of extracts from the logs kept by light-keepers with reference to the direction of the wind or the state of the weather at the time of the collision, or the performance of the alleged salvage services, are usually admitted in evidence if verified by affidavits sworn by the clerks having the custody of the original logs (*k*). Affidavits of superintendents, or resident keepers appointed under the Act (*l*), respecting Lighthouses, etc., of similar matters will no doubt be receivable, as well as those of government officials appointed under the Wrecks and Salvage Act (*m*), and other statutes. By the late statute, *The Canada Evidence Act, 1893*, it is provided (s. 13), that where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other statute exists, which renders its contents proveable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before a person having, by law or by consent of parties, authority to hear, receive and examine evidence, provided it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted.

By the Imperial Statutes (set forth in Appendix) 3 & 4 V. c. 65, ss. 7, 8, 9, and 24 V. c. 10, ss. 17-22, made ap-

(*k*) Wms. & B., 429.

(*l*) R. S. C. c. 70.

(*m*) R. S. C. c. 81.

Rule 88.

plicable to Colonial Courts of Admiralty by *The Colonial Courts Admiralty Act, 1890*, power was conferred upon the High Court of Admiralty to summon witnesses before it, to compel either party in any cause or matter to answer interrogatories, to compel discovery, production, and inspection of documents, examination on commission, and to compel the attendance of witnesses by writs of *subpoena ad testificandum* or *duces tecum* and generally as to witnesses and evidence in Admiralty.

The practice in the High Court (Eng.) in Admiralty is, (there being a rule to that effect), that in default actions *in rem* (*n*), and in references, and upon any motion, petition or summons, evidence may be taken by affidavit (*o*). The person making such affidavit is subject to cross-examination. (Rule 90, *infra*).

By the practice of the High Court (Eng.) in Admiralty where affidavits have been previously made and read in court upon any proceeding in a cause or matter, they may be used on motion before the judge in chambers (*p*).

Evidence taken before the Admiralty registrar, or before an examiner or commissioner, is regarded as admissible as evidence in the suit for all the purposes for which the same evidence, if it had been taken before the judge orally in court, would have been admissible; it being open to any party to apply for an order that a witness who has made a deposition in an action attend for examination *viva voce* at the hearing (*q*).

When defendant admits all the facts pleaded in the statement of claim in a salvage action, the plaintiff will not be allowed to call evidence except by permission of the court and on special grounds (*r*).

A letter from the master of a ship to the owners is admissible as evidence against them in regard to the facts therein

(*n*) *The Solis*, 10 P. D. 62; *The Sfactoria*, 2 P. D. 3; Wms. & B. 2nd ed. 429.

(*o*) Wms. & B. 2nd. ed. 419, 612.

(*p*) *Ibid*, 430.

(*q*) See Wms. & B. 2nd ed. 423, and rules 90, 91, *infra*.

(*r*) *The Hardwick*, 9 P. D. 32.

(*s*) *The Solway*, 10 P. D. 137.

stated: but the opinion of the master in such a letter is not evidence (s). Rules 89-91.

In an action of damage the engineer's log is admissible as evidence against the ship owner by whom the engineer is employed (t).

In an action of limitation of liability the defendants by their defence denied that the registered tonnage of the plaintiff's ship was the correct tonnage, and at the hearing tendered evidence in support of their defence, and it was held the evidence was admissible (u).

By *The Canada Evidence Act, 1893*, s. 3, "A person shall not be incompetent to give evidence by reason of interest or crime," and by s. 5, "No person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person." See further provisions in *The Evidence Act*.

89. Evidence on a motion shall in general be given by affidavit, and at the hearing by the oral examination of witnesses; but the mode or modes in which evidence shall be given, either on any motion or at the hearing, may be determined either by consent of the parties, or by order of the judge. Evidence on motion or at hearing determined by consent of parties or order of judge.

90. The judge may order any person who has made an affidavit in an action to attend for cross-examination thereon before the judge, or the registrar, or a commissioner specially appointed. Order to attend for cross-examination.

91. Witnesses examined orally before the judge, the registrar, or a commissioner, shall be examined, cross-examined, and re-examined in such order as the judge, registrar or commissioner may direct; and questions may be put to any wit- The order and manner in which witnesses may be examined, &c.

(t) *The Earl of Dumfries*, 10 P. D. 31.

(u) *The Receipt*, 14 P. D. 131.

Rules 92-94. ness by the judge, registrar, or commissioner, as the case may be.

The practice in Admiralty, High Court, (Eng.), as to this is: That the examiner may put any question as to the meaning of any answer or as to any matter arising in the course of the examination. If any question put to a witness is objected to, the question and answer should be written down separately, and a note made of the objection. Any special matter arising in the course of the examination may be set forth in the return made by the examiner or commissioner (*v*).

Examination
by interpreta-
tion.

92. If any witness is examined by interpretation, such interpretation shall be made by a sworn interpreter of the court, or by a person previously sworn according to the form in the appendix hereto, No. 33.

OATHS.

Oaths, persons
to administer.

93. The judge may appoint any person to administer oaths in Admiralty proceedings generally, or in any particular proceedings. Forms of appointments to administer oaths will be found in the appendix hereto, No. 34.

Declaration in
lieu of oath.

94. If any person tendered for the purpose of giving evidence objects to take an oath, or is objected to as incompetent to take an oath, or is by reason of any defect of religious knowledge or belief incapable of comprehending the nature of an oath, the judge or person authorized to administer the oath shall, if satisfied that the taking of an oath would have no binding effect on his conscience, permit him, in lieu of an oath, to make a declaration. Forms of oath and of declaration in lieu of oath will be found in the appendix hereto, Nos. 35 and 36.

(*v*) Wms. & B. 2nd ed. 427.

AFFIDAVITS.

Rules 95-100.

95. Every affidavit shall be divided into short paragraphs numbered consecutively, and shall be in the first person. Affidavits: to be divided into paragraphs numbered &c..

96. The name, address, and description of every person making an affidavit shall be inserted therein. Name, address, &c.

97. The names of all the persons making an affidavit, and the dates when, and the places where it is sworn, shall be inserted in the jurat. Names, &c., in jurat.

98. When an affidavit is made by any person who is blind, or who from his signature or otherwise appears to be illiterate, the person before whom the affidavit is sworn shall certify that the affidavit was read over to the deponent, and that the deponent appeared to understand the same, and made his mark or wrote his signature thereto in the presence of the person before whom the affidavit was sworn. Affidavit by person blind or illiterate to be read over and certified.

99. When an affidavit is made in English by a person who does not speak the English language, or in French by a person who does not speak the French language, the affidavit shall be taken down and read over to the deponent by interpretation either of a sworn interpreter of the court, or of a person previously sworn faithfully to interpret the affidavit. A form of jurat will be found in the appendix hereto, No. 37. Affidavit by interpretation, how made.

100. Affidavits may, by permission of the judge, be used as evidence in an action, saving all just exceptions,— Affidavits, if in United Kingdom or British Possession.

(1) If sworn to, in the United Kingdom of Great Britain and Ireland, or in any

Rules 101-103.

Out of Her
Majesty's
dominions.

British possession, before any person authorized to administer oaths in the said United Kingdom or in such possession respectively;

- (2) If sworn to in any place not being a part of Her Majesty's dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, the signature of such judge or magistrate being authenticated by the official seal of the court to which he is attached.

Affidavit
sworn before
solicitor of
party may be
objected to.

101. The reception of any affidavit as evidence may be objected to, if the affidavit has been sworn before the solicitor for the party on whose behalf it is offered, or before a partner or clerk of such solicitor.

EXAMINATION OF WITNESSES BEFORE TRIAL.

Examination
before trial of
witnesses who
cannot attend
trial.

102. The judge may order that any witness, who cannot conveniently attend at the trial of the action, shall be examined previously thereto, before either the judge, or the registrar, who shall have power to adjourn the examination from time to time, and from place to place, if he shall think necessary. A form of order for examination of witnesses will be found in the appendix hereto, No. 38.

The Admiralty practice of the High Court, (Eng.), admits of the examination before trial of witnesses who cannot be detained until the hearing (*w*).

See as to evidence generally Rule 88 and notes.

Examination
before commis-
sioner
specially ap-
pointed.

103. If the witness cannot be conveniently examined before the judge or the registrar, or is

(*w*) Wms. & B. 418, *cit. The Two Friends*, Lush. 552.

beyond the limits of the district, the judge may Rules 104-109.
order that he shall be examined before a commis-
sioner specially appointed for the purpose.

104. The commissioner shall have power to Power to swear witnesses.
swear any witnesses produced before him for
examination, and to adjourn, if necessary, the
examination from time to time, and from place to
place. A form of commission to examine witnesses
will be found in the appendix hereto, No. 39.

105. The parties, their counsel and solicitors, Counsel and solicitors at examination.
may attend the examination, but, if counsel attend
the fees of only one counsel on each side shall be
allowed on taxation, except by order of the judge.

106. The evidence of every witness shall be Evidence to be taken in writing and certified.
taken down in writing, and shall be certified as
correct or approved of by the judge, or registrar, or
by the commissioner, as the case may be.

107. The certified evidence shall be lodged in Evidence lodged in registry.
the registry, or, if taken by commission, shall
forthwith be transmitted by the commissioner to Transmitted to registry.
the registry, together with his commission. A
form of return to commission to examine witnesses
will be found in the appendix hereto, No. 40.

108. As soon as the certified evidence has been Evidence may be filed by either party.
received in the registry, it may be taken up and
filed by either party, and may be used as evidence
in the action, saving all just exceptions.

SHORTHAND WRITERS.

109. The judge may order the evidence of the Examination taken in shorthand.
witnesses whether examined before the judge, or
the registrar or a commissioner, to be taken down
by a shorthand writer, who shall have been previ-

Rule 100.

ously sworn faithfully to report the evidence, and a transcript of the shorthand writer's notes, certified by him to be correct and approved by the judge, registrar, or commissioner, as the case may be, shall be lodged in or transmitted to the registry as the certified evidence of such witnesses. The shorthand writer shall, in addition to such transcript thereof, supply to the registrar three copies of such transcript, one of which shall be handed to the judge, and the others given to the plaintiff and defendant respectively. A form of oath to be administered to the shorthand writer will be found in the appendix hereto, No. 41.

The table of fees hereto, IX., provides for the fees taxable for shorthand writers.

The shorthand writer is, according to the English practice, approved by the court, and sworn, as required in this rule. A transcript of his notes certified by him to be correct is admitted to prove the oral evidence of the witnesses. Such notes are the only notes which are allowed to be used for the purpose of appeal, and although the judges have nothing to say to notes being taken for the use of the parties, they have something to say as to the appointment of a gentleman upon whose notes their judgments are to be upheld or set aside. And the Court refused an application by parties to an action to appoint a shorthand writer *pro hac vice*, or other than the court had already appointed (x).

If after filing in the Admiralty Registry the transcript of the shorthand notes of the evidence of a witness taken before an examiner, a mistake is discovered to have been made by the shorthand writer in transcribing his notes, application should be made by the party aggrieved to the court for an order directing that the transcript be taken off the file and returned to the examiner for amendment,

(x) Wms. & B. 2nd Ed. 419 n.

and the costs thereby incurred will be costs in the Rules 110-112.
cause (y).

PRINTING.

110. The judge may order that the whole of ^{Printing of pleadings and written proofs.} the pleadings and written proofs, or any part thereof, shall be printed before the trial; and the printing shall be in such manner and form as the judge shall order.

As to printing evidence taken in a previous action; See *The Mammoth*, 9 P. D. 126.

111. Preliminary Acts, if printed, shall be ^{Preliminary acts.} printed in parallel columns.

ASSESSORS.

112. The judge, on the application of any party, ^{Appointment of assessors.} or without any such application if he considers that the nature of the case requires it, may appoint one or more assessors to advise the court upon any matters requiring nautical or other professional knowledge.

According to the English practice, in actions of damage and salvage, the attendance of assessors is obtained as a matter of course by filing a *præcipe* in the registry (z).

The Court of Appeal (Eng.) is not bound by the judgment of its nautical assessors, though it attaches great weight to their opinion and experience (a).

The court may grant an order on the application of either party permitting the assessors, as well as the party or his witnesses, to view any property, the inspection of which may be material to the issue in dispute, and may make such order as to costs arising thereout as to it shall seem fit. (A. C. Act, 1861, sec. 18, *post*.) And they may be accompanied by the solicitors in the action (b).

(y) *The Kautsford*, 1891, P. 219.

(z) *Wms. & B.* 442.

(a) *The Christiana*, 7 Moo. P. C. C. 160; *The Aid*, 6 P. D. 84.

(b) *The Germania*, 37 L. J. Ad. 59; 19 L. T. N. S. 20.



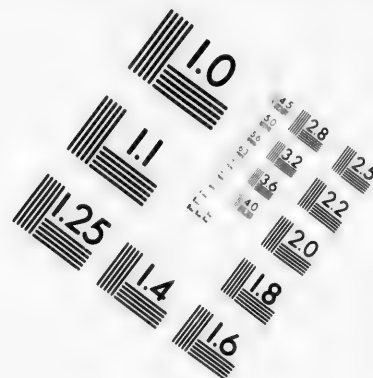
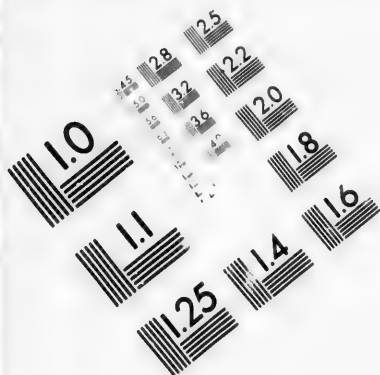
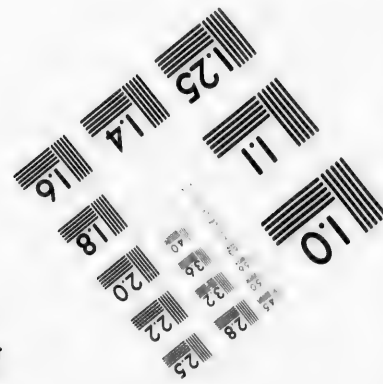
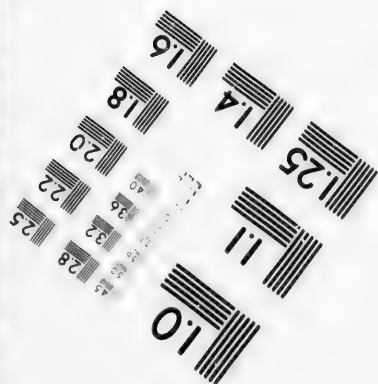
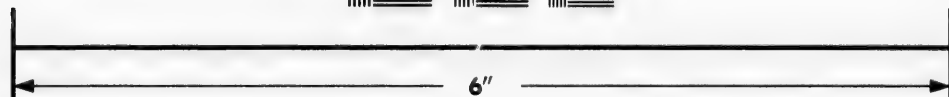
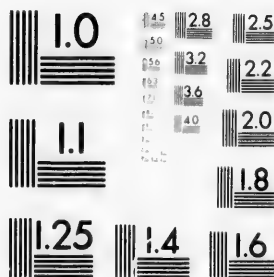


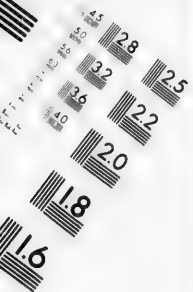
IMAGE EVALUATION TEST TARGET (MT-3)



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Rules 113-115.Fees of
Assessors.

113. The fees of the assessors shall be paid in the first instance by the plaintiff, unless the judge shall otherwise order.

SETTING DOWN FOR TRIAL.

Filing notice
of trial.

114. An action shall be set down for trial by filing a notice of trial. A form of notice of trial will be found in the appendix hereto, No. 42.

The practice in Admiralty in the High Court (Eng.), requires that before an action can be set down for trial or hearing, except where otherwise ordered by the court or judge, the notice of trial should previously have been served on the adverse party (*bb*).

If there has
been no ap-
pearance.

115. If there has not been any appearance, the plaintiff may set down the action for trial, on obtaining from the judge leave to proceed *ex parte*,—

In an action
in personam or
against pro-
ceeds.

(a) In an action *in personam*, or an action against proceeds in court, after the expiration of *two weeks* from the service of the writ of summons;

The proceedings to obtain judgment in default of appearance in an action *in personam* are in the High Court (Eng.) in Admiralty, the same as in actions in the Common Law Divisions (*c*).

In an action
in rem.

(b) In an action *in rem* (not being an action against proceeds in court), after the expiration of *two weeks* from the filing of the warrant.

The practice in England in Admiralty on default of appearance in actions *in rem* is to enter the cause for hearing when it will be set down in the list; but in some cases where there are exceptional circumstances the

(bb) Wms. & B. 2nd Ed. 437, and see note to Rule 116 *infra*.

(c) Smith's Admiralty Pr., 145; Wms. & B. 2nd Ed. 328.

cause may come before the judge on a motion for judgment and a decree is made according to the claim indorsed on the writ without a statement of claim (*d*).

Rule 116.

In the case of an action on a bottomry bond the original bond must in all cases be brought into court (*e*).

When foreign sailors are plaintiffs and a sum is demanded by way of *viaticum*, a certificate of their consul must be brought to the notice of the judge, stating that the plaintiffs are returning home at their own cost (*f*).

In order to obtain judgment for default of appearance in an action *in rem* under the English practice, which provides that:—In all actions, not . . . otherwise specially provided for, in case the party served with the writ, or in Admiralty actions *in rem* the defendant does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed . . . of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed to the provisions of the order on that subject—the ten days stated in the rule must elapse, and a notice of trial must be filed in the registry (*g*). Butt, J., quoting the language of the Rule—that “he” the plaintiff—“may proceed as if the party had appeared”—held that the plaintiff must wait the full time which defendant might have had in which to plead and that he must also give the notice of trial in the registry, observing that “it is very undesirable to seize and sell ships in great haste, and there should be plenty of time allowed between the seizure and sale.

Rule 61, *ante*, provides that every action shall be heard without pleadings, unless the judge shall otherwise order.

116. If there has been an appearance, either If an appearance. party may set down the action for trial,—

(*d*) *The Julina*, 35 L. T. N. S. 410 (1876).

(*e*) *The Rovena*, 37 L. T. N. S. 366.

(*f*) *The Raffaelluccia*, 37 L. T. N. S. 365.

(*g*) *The Fair Haven*, L. R. 1 Ad. 67.

(*g*) *The Avenir*, 9 P. D. 84. (The plaintiff had filed a statement of claim and affidavit of service.)

Rule 116.

After expiration of one week.

If pleadings have been ordered.

Default in pleading.

(a) After the expiration of *one week* from the entry of the appearance, unless an order has been made for pleadings, or an application for such an order is pending ;

(b) If pleadings have been ordered, when the last pleading has been filed, or when the time allowed to the adverse party for filing any pleading has expired without such pleading having been filed.

In an action for necessities supplied to a foreign ship the writ was indorsed : "The plaintiffs' claim for £900 for necessities supplied to the *Sfactoria* whilst lying at Swansea." The *S.* was arrested in the suit, and an appearance was subsequently entered on behalf of her owners but no bail having been put in the vessel remained under arrest. A statement of claim was delivered. The defendants did not deliver any defence. The plaintiffs moved under the rule (S. C. Jud.) providing that, "if the plaintiffs' claim were only for a debt or liquidated demand, and the defendant did not within the time allowed . . . deliver a defence or demurrer, the plaintiffs might at the expiration of such time, enter final judgment for the amount claimed with costs." Sir R. Phillimore held that that rule did not apply to proceedings in an Admiralty action *in rem* and that the practice in the High Court of Admiralty before the Judicature Acts must be followed, and that no notice would be required to be given to the owners as the arrest of the vessel was notice to all the world, but ordered the motion to stand, with leave that the allegations in the statement of claim might be proved by affidavit ; observing that there would be danger of selling the wrong vessel unless the court had full information (*h*).

An action for damages under Lord Campbell's Act was commenced in the Admiralty Division and no application

(*h*) *The Sfactoria*, 2 P. D. (1876), 3 : 35 L. T. N. S. 431.

was made to transfer the cause to any other division, and ^{Rules 117, 118.} it was held that upon default in pleading by the defendants the plaintiffs were entitled to enter interlocutory judgment, and have the damages assessed and apportioned by a jury, under a rule by which if the plaintiffs claim be for . . . pecuniary damages and the defendant make default in delivering defence, the plaintiff may enter such a judgment (i).

In collision cases the Preliminary Acts may be ^{Opening Preliminary Acts} opened as soon as the action has been set down for trial.

117. Where the writ of summons has been ^{Where claim to have account taken.} indorsed with a claim to have an account taken, or the liability has been admitted or determined, and the question is simply as to the amount due, the judge may, on the application of either party, fix a time within which the accounts and vouchers, and the proofs in support thereof, shall be filed, and at the expiration of that time either party may have the matter set down for trial

See Rule 6, *ante*.

TRIAL.

118. After the action has been set down for ^{Time and place of trial.} trial, any party may apply to the judge, on notice to any other party appearing, for an order fixing the time and place of trial; or he may upon giving the opposite party ten days' notice, set the action down for trial at any sitting of the court duly appointed to be held by the judge.

Jury.—Under 34 Vict. (Imp.) c. 65, s.s. 11-16, the Court of Admiralty had power to direct a trial by jury in London or at the County Assizes of any specified issue; *e. gr.* an issue has been directed to try the existence of a custom or usage (j).

(i) *The Orwell*, 13 P. D. 80.

(j) *The Harriet*, 1 W. Rob. 439.

Rules 119-121.

There is according to the English practice no absolute right to a jury; and an order refusing a jury in an action *in rem* in the Admiralty Division by the master of a ship for disbursements was affirmed on appeal (*k*).

See Rule 163, *infra*, and 3 & 4 V. c. 65, s. 11, in Appendix.

By s. 24 of 50 & 51 V. c. 15, issues of fact and inquiries in the Exchequer Court of Canada are to be tried by the judge without a jury.

The Court of Admiralty in modern times has not exercised the power of summoning a jury to try causes (*l*).

Who shall
begin.

119. At the trial of a contested action the plaintiff shall in general begin. But if the burden of proof lies on the defendant, the judge may direct the defendant to begin.

Where there are pleadings they set forth the main facts relied on by each party, and usually no opening statement by counsel is necessary, and the court at the hearing proceeds at once to the evidence (*m*).

In actions of damage the onus of proof is almost always upon the plaintiff (*n*), whether inevitable accident be pleaded or not (*o*); and where there are rival salvors and the actions have been consolidated, those have the right to begin who have first entered their actions (*p*).

If several
plaintiffs or
defendants.

120. If there are several plaintiffs or several defendants, the judge may direct which plaintiff or which defendant shall begin.

Order of pro-
ceeding in the
trial of an
action.

121. The party beginning shall first address the court, and then produce his witnesses, if any. The other party or parties shall then address the

(*k*) *The Temple Bar*, 11 P. D. 6 C. A. (1885).

(*l*) *Wms. B.* 2nd Ed. 448.

(*m*) *Ibid.*

(*n*) *Ibid.*

(*o*) *The Otter*, L. R. 4 Ad. 203; *The John Owen*, 5 C. L. T. 565.

(*p*) *The Morocco*, 24 L. T. N. S. 598.

court, and produce their witnesses, if any, in such order as the judge may direct, and shall have a right to sum up their evidence. In all cases the party beginning shall have the right to reply, but shall not produce further evidence, except by permission of the judge. Rules 122-124.

The witnesses are examined by the counsel who call them, are cross-examined by the opposite counsel, and re-examined by their own counsel. But the counsel of rival salvors may cross-examine each other's witnesses on points as to which they are at issue. Should a point of law arise the court hears counsel on each side (*q*).

Witnesses not parties to the action should be kept out of court until the hearing (*r*).

122. Only one counsel shall in general be heard on each side; but the judge, if he considers that the nature of the case requires it, may allow two counsel to be heard on each side. Counsel.

As to costs of a third counsel, see *The Mammoth*, 9 P. D. 126.

In salvage cases each plaintiff may be represented by separate counsel (*s*).

123. If the action is uncontested, the judge may, if he thinks fit, give judgment on the evidence adduced by the plaintiff. Uncontested action.

REFERENCES.

124. The judge may, if he thinks fit, refer the assessment of damages and the taking of any account to the registrar either alone, or assisted by one or more merchants as assessors. Assessment of damages, and taking accounts.

See A. C. Act, 1861, s. 23, App., as to powers of registrar.

(*q*) Roscoe's Ad. Pr. 179.

(*r*) Wms. & B. 419.

(*s*) *The Scout*, L. R. 3 Ad. 514 n.; 41 L. J. Ad. 42; *The Morocco*, 24 L. T. N. S. 598.

Rule 124.

Practice on
References.

Where the amount in dispute is so small that the further expense consequent on the reference is not justifiable, or where the court can with ease settle the matter itself, a reference is dispensed with (*t*).

Questions of law are not referred (*u*). But the matter may be referred with directions to the registrar to observe certain principles of law in his investigation (*v*).

The merchants are appointed by the registrar with the approval of the judge, to assist the registrar on references when required. In some cases the reference is to the registrar alone, but when the inquiry relates to any special matter of a commercial nature, it is directed to be before the registrar, assisted in default cases by one, in other cases by two merchants (*w*).

Where several actions have been consolidated one of such actions can be referred separately, if convenient, without any reference of the others (*x*).

The practice in the Admiralty Division, Eng., as to references governed by the rules of the Supreme Court, 1883, taken from the rules of the High Court of Admiralty of 1859, 107-118 (see Wms. & B. 572, 614), and not provided for in these rules, is as follows:—Within 12 days from the date of the order of reference the solicitor for the claimant files his claim and affidavits, and within 12 days from such filing the adverse solicitor files his counter-affidavits. From the filing of the latter 6 days are allowed for filing any further affidavits by either party, save by order of the judge, or permission of the registrar. Within 3 days from the expiration of the time allowed for filing the last affidavits the claimant files a notice to have the reference placed on the registrar's list for hearing, if he does not do so the adverse solicitor may apply to the court or judge to have the claim dismissed with costs. At the time appointed, if either solicitor be present, the reference may be proceeded

(*t*) *The Eleanore*, Br. & L. 185; 33 L. J. Ad. 19.

(*u*) *The Ocean*, 10 Jur. 506.

(*v*) *The St. Cloud*, Br. & L. 4 (19).

(*w*) Wms. & B. 450.

(*x*) *The Helen R. Cooper*, L. R. 3 Ad. 339; 40 L. J. Ad. 46.

with, but the registrar may adjourn in like manner as Rules 125-127. provided in Rule 125, *infra*.

Under the English practice upon references in Admiralty actions, witnesses may be produced before the registrar for examination, and their evidence, if required, taken in shorthand; or the evidence may be by affidavit. If the evidence be given by affidavit it is in the discretion of the Registrar to refuse, if he thinks fit, to give weight to such evidence unless and until the deponent has been cross-examined on his affidavit, and where the deponent is a party to the action he may, though resident abroad be required to attend in this country for such cross-examination (*y*).

In actions of salvage, wages, and necessities, interest ^{Interest.} runs on the amount awarded from the date of entering judgment (*z*). And on damages awarded, from the time when the claim arose (*a*). And on bottomry bonds from the time at which the bond is due (*b*).

The registrar and merchants may upon a reference reduce the amount payable under a bottomry bond (*c*).

125. The rules as to evidence, and as to the ^{Rules of evidence in case of reference.} trial, shall apply *mutatis mutandis* to a reference to the registrar, and the registrar may adjourn the proceedings from time to time, and from place to place, if he shall think necessary.

126. Counsel may attend the hearing of any ^{Counsel fees on reference.} reference, but the costs so incurred shall not be allowed on taxation unless the registrar shall certify that the attendance of counsel was necessary.

127. When a reference has been heard, the ^{Report in cases of reference.} registrar shall draw up a report in writing of the

(*y*) Wms. & B. 572, 614; *The Parisian*, 13 P. D. 16.

(*z*) *The Jones Brothers*, 37 L. T. N. S. 164; 46 L. J. Ad. 75; Wms. & B. 2nd Ed. 207n.

(*a*) *The Gertrude*; *The Baron Aberdare*, 12 P. D. 204.

(*b*) *The Edmond*, Lush. 211; 30 L. J. Ad. 123.

(*c*) *The Pontida*, 9 P. D. 102.

Rules 128-132. result, showing the amount, if any, found due, and to whom, together with any further particulars that may be necessary. A form of the report will be found in the appendix hereto, No. 43.

By the practice in Admiralty, Eng., the registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom (*d*).

Notice of
report being
ready.

128. When the report is ready, notice shall be sent to the parties, and either party may thereupon take up and file the report.

By the English practice, if the claimant do not take up and file the report, the adverse solicitor may do so and apply to the court or judge to have the claim dismissed with costs (*dd*).

Notice of
motion to
vary report.

129. Within *two weeks* from the filing of the registrar's report, either party may file a notice of motion to vary the report, specifying the items objected to.

By the practice referred to in the last note, the notice before being filed is served on the adverse solicitor.

Hearing of
motion to
vary.

130. At the hearing of the motion the judge may make such order thereon as to him shall seem fit, or may remit the matter to the registrar for further inquiry or report.

When report
shall stand
confirmed.

131. If no notice of motion to vary the report is filed within *two weeks* from filing the registrar's report, the report shall stand confirmed.

COSTS.

Costs in
general to fol-
low result.

132. In general costs shall follow the result; but the judge may in any case make such order as to the costs as to him shall seem fit.

(*d*) Wms. & B. 615.

(*dd*) *Ibid.*

The principle that, in general, costs are to follow the result has been applied in actions for necessities (e); damage by collision (f); damage to cargo (g); possession (h); mortgage (i); wages (j); salvage (k); bottomry (l); towage (m).

Costs in Admiralty cases were in the discretion of the court, excepting in those cases where the provisions of statutes prevented the exercise of such discretion, thus: in actions for wages, or for master's wages and disbursements, unless the plaintiff recovered £50, he could not recover costs unless the judge certified that the cause was a fit one to be tried in the Court of Admiralty (n). All enactments under which plaintiffs were, in England, required to obtain certificates for costs are now impliedly repealed (o).

The discretion of the court as to costs is exercised according to certain rules of practice. The court looks not at the result alone but considers all the circumstances which affect the equity of the case. It will not give costs to a successful suitor where the law is exceedingly difficult, or the question is one *primæ impressionis* (p).

In towage actions, when there has been carelessness on the part of the towed and towing vessel, each party will have to bear their own costs (q).

(e) *The Wataga*, Sw. 165; *The Heinrich Bjorn*, 11 App. Cas. 270.

(f) *The Washington*, 5 Jur. 1067; *The Telegraph*, 1 Spk. 427; *The Monk-seaton*, 14 P. D. 51.

(g) *The Freedom*, L. R. 3 P. C. 594; *The Duero*, L. R. 2 A. & E. 393.

(h) *The Eliza Cornish*, Spk. 36; 17 Jur. 738; *The Eastern Belle*, 33 L. R. N. S. 214.

(i) *The Sherbro*, 5 Asp. 88.

(j) *The Blake*, 1 W. Rob. 88; *The Syluey Cove*, 2 Dods. 13; *The Ferret*, 8 App. Cas. 329; *The Royal Family*, 3 L. T. N. S. 704.

(k) *The Accomac*, 1891 P. 349 C. A.; *The Frances Mary*, 2 Hagg. 89; *The Gleniffer*, 3 E. C. R. 57; *The C. F. Sargent*, *Ibid.* 332.

(l) *The Ocean*, 10 Jur. 506; 4 N. of C. 571; *The Gannet*, 3 W. Rob. 169; *The Senora Del Carmine*, 1 Spk. 302.

(m) *The Hjennett*, 5 P. D. 227; *The Undaunted*, 11 P. D. 46.

(n) 24 Vict. c. 10, s. 10.

(o) Wms. & B. pp. 203, 464; *Garnett v. Bradley*, 3 App. Ca. 944.

(p) Wms. & B. 465.

(q) *The Energy*, L. R. 3, A. & E. 48.

Rule 132.

In actions for damage, if the damage is caused by inevitable accident the court makes no order as to costs, unless the action was unreasonably brought (*r*).

In a recent case in which the defence to an action for damages by collision was inevitable accident, the plaintiffs obtained judgment on the ground that negligence on the part of the defendant had been proved. On appeal to the Court of Appeal the defence of inevitable accident, viz., the breaking of the shackle, without negligence, by which defendant's vessel was moored to a buoy, was established and the judgment was reversed, and the court having heard argument on the question of costs, held that as the Admiralty Court is a division of the High Court of Justice, the general rule in the other divisions, that, in the absence of special circumstances, costs follow the event, ought to be followed in that court, and that on the appeal being allowed, the defendants were entitled to the costs both of the appeal and in the court below (*s*).

If both parties are to blame in a collision case, they must each bear their own costs (*t*).

The rule as to costs when the defence of compulsory pilotage is set up seems to be that where this is the sole ground of defence, and the defendant succeeds upon it, he is entitled to his costs (*u*); but that where other grounds are also relied on in addition to that of compulsory pilotage and the defence is successful on this point alone, then each party bears his own costs (*v*).

Actions for seamen's wages are a class of cases in which costs are not usually given against the plaintiff, and where in a case in which the result was that the owners were dismissed on the ground that the claim for wages had been forfeited by misconduct, the court made no order as to costs (*w*).

(*r*) *The Marpesia*, L. R. 4 P. C. 212; Wms. & B. 86.

(*s*) *The Monkseaton*, 14 P. D. 51 (1889).

(*t*) *The Elizabeth Jenkins*, L. R. 1 P. C. 501.

(*u*) *The Juno*, 1 P. D. 135.

(*v*) Wms. & B. 2nd Ed. 94, 95.

(*w*) *The Vibilla*, 2 Hagg. 228.

In a case before Sir R. Phillimore, in 1874, the plaintiff, a master mariner, was decreed his wages with "detention and board" money from a date five days subsequently to the institution of the suit, with taxed costs of suit (*x*).

If the claim of the master is exorbitant, he may be condemned in costs (*y*), or owners may be equally to blame, in making an excessive counter-claim, when each party may have to pay their own costs (*z*). A master may be entitled to wages, yet his conduct may have fully justified a defence to the action, when each party may be ordered to pay their own costs. If a claimant has the means of living at a cheaper rate than would ordinarily be the case, the costs in the nature of detention and living-money, where allowed, must be less (*a*).

Unsuccessful plaintiffs in salvage actions, have been allowed all or some part of their costs, upon the principle of encouraging mariners to rescue property (*b*). Where the court refuses to uphold an agreement on the ground of its being inequitable, but decrees some reward to the salvors, it may also allow the plaintiffs their costs (*c*).

In such a case, it may, if there has been no sufficient tender, leave each party to pay their own costs (*d*).

Where the contract of service is held to prevent a salvage reward no order is made as to costs (*e*). Salvors who have substantiated their claim are sometimes deprived of all or a part of their costs in consequence of improper conduct, such as denying the services of co-salvors (*f*)—not doing all they might have done (*g*). To avoid difficulties as to apportion-

(*x*) *The Royal Family*, 31 L. T. N. S. 704.

(*y*) *The William*, Lush. 199.

(*z*) *The Lemuella*, Lush. 147.

(*a*) Wms. & B. 208. See also *The Karla*, Br. & L. 367.

(*b*) *The Princess Alice*, 3 W. Rob. 143; *The Ranger*, 9 Jur. 119; *The Vine*, 2 Hagg. 1; *The Frances and Eliza*, 2 Dods. 115.

(*c*) *The Riatto*, 1891, P. 175.

(*d*) *The Medina*, 1 P. D. 272; 2 P. D. 5, C. A.; *The Silesia*, 5 P. D. 186.

(*e*) *The Ganges*, L. R. 2 Ad. 370.

(*f*) *The Bartley*, Swa. 198; *The Glasgow Packet*, 2 W. Rob. 306.

(*g*) *The Scout*, L. R. 3 Ad. 512.

Rule 132.

ment where there are several sets of salvors one sum *nomine expensarum* is given to them in place of costs (*h*).

At times when a plaintiff is unsuccessful no order is made as to costs, as when a suit is dismissed for want of jurisdiction. A salvage action having been dismissed for want of jurisdiction, the court did not order the plaintiff to pay costs, namely, where the services had been rendered in foreign territorial waters, between whose government and that of Great Britain no treaty existed as to the interchange of wrecking services in each other's territorial waters (*i*).

The general costs of the action payable to the salvors should be apportioned as between the owners of the salved ship and her cargo, in accordance with the principle laid down in *The Peace*, Sw. 115, but without prejudice to the salvor's right to recover the whole from either (*j*).

When a fund, by a sale of a ship, is placed in court by one set of claimants, so as to be available for other claimants, the former are entitled to their costs up to and inclusive of the sale, though they do not rank first in respect of their actual claim (*k*).

Tender.—When a tender is pronounced for, the Court will generally order the plaintiff to pay the costs of the action (*l*). It has the same effect on the costs of a reference as of the main action, but it will not, where insufficient, and the plaintiff has put forward exorbitant claims, exonerate him from costs on account of such improper claim (*m*); but if the tender is made in an irregular manner, the defendants will not obtain their costs though it is pronounced for (*n*). The usual order is that the plaintiffs pay the costs incurred since the tender (*o*); and to give them the costs of the action up to that time (*p*).

(*h*) *The Enterprise*, 2 Hagg. 178 n.; *The Kathleen*, 31 L. T. N. S. 204 (210)

(*i*) *The Willem ILL*, L. R. 3 Ad. 487; 25 L. T. N. S.

(*j*) *The Elton*, 1891, P. 265, 271; *The Marquis of Huntley*, 3 Hagg. 246.

(*k*) *The Panthea*, 25 L. T. N. S. 389; 1 Asp. Mar. Law Cas. 133; *The Immacolata Concezione*, 9 P. D. 37.

(*l*) Wms. & B. 405.

(*m*) *The William*, Lush. 199.

(*n*) *The Hickman*, L. R. 3 Ad. 15.

(*o*) *The Lotus*, 7 P. D. 199.

(*p*) *The William Symington*, 10 P. D. 1.

Reference.—The rule formerly was that if the defendant in a reference took off one third of the plaintiff's claim, the latter must pay costs; if one fourth, each party must then bear his own costs. But now the court will exercise its discretion according to the circumstances of each particular case (*q*). In an action of damage, where the defendant sets up a counterclaim in respect of the collision out of which the action arose, and both ships are held to blame, both parties will, as a general rule, be entitled to the costs of a reference to the registrar (*r*).

Rule 132.

But where in such a case no tender had been made by defendants before the reference, they were condemned in the costs of the reference (*s*).

And in such an action, the liability being admitted before statement of claim, and the question of the amount referred to the registrar and merchants by consent, the court gave plaintiffs the costs of the action, but not of the reference, the court being of opinion that the plaintiffs should, under the circumstances, not have claimed before the registrar the amount which they did claim (*t*).

Witnesses.—Costs of material witnesses, who, though in attendance at the hearing, have not been called are allowed on taxation (*u*).

Costs of an appeal against the registrar's report, usually follow the result (*v*).

On Appeal.—The costs of Appeal—that is to say, both those in the Appeal Court and in the court below—follow the event (*w*), unless there are very strong reasons to the contrary (*x*).

As to bail for costs, see Rule 134, *infra*.

(*q*) *The Frioleberg*, 10 P. D. 112 C., overruling *The Empress Eugenie*, Lush. 140.

(*r*) *The Mary*, 7 P. D. 201.

(*s*) *The Saverlake*, 5 P. D. 166.

(*t*) *The Williamina*, 3 P. D. 97.

(*u*) *The Biddick*, 38 L. J. Ad. 24.

(*v*) *The Black Prince*, Lush. 577; *The Eilean Dubh*, 49 L. T. R. 444; *The Panama*, 1 P. D. 452.

(*w*) *The Monkseaton*, *sup*.

(*x*) *The City of Berlin*, L. R. 2 Ad. 186; *The Glannibanta*, L. R. 1 Ad. 283.

Rules 133-134.

Taxation of Costs.—As regards the taxation of costs, see Rules 139-144, *infra*.

Payment.—When costs have been taxed, an order for payment may be taken out under Rule 192.

Costs bear interest from the date of the judgment for costs (*y*).

Solicitor's Lien.—A solicitor has a charge upon the property recovered or preserved through his instrumentality in priority to claims which accrue after the institution of the suit (*z*).

In an Admiralty action for wages the plaintiffs and defendants compromised the action by payment to each of the plaintiffs of a certain sum in discharge of the claim and costs; and the plaintiffs left the country without paying their solicitor's costs. Sir R. Phillimore made an order in the action that the defendants pay the solicitors their taxed costs. That order was reversed on appeal, it not having been shown that notice of the lien had been given to the defendants, or that there had been collusion or fraudulent conspiracy between the parties to cheat the solicitor of his costs (*a*).

Where plaintiff's solicitors had given notice of their lien to defendant's solicitors, who disregarded it and paid over money, the fruit of the action, in pursuance of a compromise effected, without the intervention of plaintiff's solicitors, it was held that the solicitors of defendant must themselves satisfy the lien (*b*).

Lump sum.

133. The judge may direct payment of a lump sum in lieu of taxed costs.

Bail for costs.

134. If any plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision), or any defendant making a counter-claim, is not resident in the district in

(*y*) Wms. & B. 468.

(*z*) *The Phillipine*, L. R. 1 Ad. 309; *The Heinrich*, L. R. 3 A. & E. 505.

(*a*) *The Hope*, 8 P. D. 144, C. A. (1883).

(*b*) *Ross v. Buxton*, 42 Ch. D. 190 (1889). See also Wms. & B. 2nd ed., 472.

which the action is instituted, the judge may, on the application of the adverse party, order him to give bail for costs. Rule 194.

When a plaintiff, other than as provided in this Rule, resides out of the jurisdiction of the Court, he may be required to give security for costs, although at the time of application he is within the jurisdiction (*c*).

Where the owners of a Danish vessel, resident out of the jurisdiction, instituted a suit in Admiralty (Eng.), for damage against the owners of a British vessel, upon motion made on behalf of the latter which was opposed on the ground that the foreign vessel was already under arrest of the court in another suit brought against her for necessities under 3 & 4 Victoria, the court, Lushington, J., directed that security should be given, and fixed that security in the sum of £100, observing that the principle upon which security for costs is required, is that unless such security is given, the adverse party in the suit has no chance of obtaining his costs if he should become entitled to them (*d*).

If the defendant, a foreigner, brings a counter-claim, he may be compelled, unless the ship is under arrest and is of sufficient value to cover the claim and costs, or sufficient bail has been given, to give security for the costs of the whole action, and not only for the costs caused by such counterclaim (*e*). The procedure by counterclaim having taken the place of cross actions in causes of damage, the practice as to security for costs, formulated by A. C. Act, 1861, s. 34, in cases when the ship of the plaintiff had not been arrested, whereby the plaintiff was obliged to give security, is applicable to cases of counterclaim (*f*). And a defendant who claims a limitation of his liability is, as regards security for costs, in the same position as an ordinary plaintiff (*g*).

(*c*) *The Franz et Elise*, Lush. 377; *The Zufall*, 44 L. J. Ad. 16.

(*d*) *The Sophie*, 1 W. Rob. 326.

(*e*) *The Julia Fisher*, 2 P. D. 115.

(*f*) *The Charkich*, L. R. 4 Ad. 120.

(*g*) *The Wild Ranger*, Lush. 553.

Rule 134.

Bail for costs may also be required where the plaintiff although within the jurisdiction, is insolvent (*h*).

Bail for costs.

The rule as to foreigners has been applied to foreign Governments (*i*).

The application for bail should be made as early as possible in an action (*j*), and proceedings will be stayed until such security as is ordered is given. If the order is not complied with within a reasonable time, the action may be dismissed (*k*). If money is paid in lieu of bail, the money must be paid into court, under Rules 177, 178, *infra*, upon a receivable order, which can be obtained at the registry.

By the rules of the Judicial Committee of the Privy Council, in appeals from Vice-Admiralty Courts, when the appellant resides out of the jurisdiction of the court, he is required to give bail in the sum of £200 sterling to answer the costs of such appeal. If the security is not given within the time required the appeal may be dismissed on motion by the respondent (*l*).

When bail for costs is given it is only for future costs certain to be incurred, not for those which already exist or may possibly arise (*m*).

Upon an appeal to the Privy Council, when an appellant is clearly liable to give bail for costs of appeal, he should offer it without necessitating an application to the court. In dealing with an application for security, the court will, in considering the question of costs, consider which of the parties necessitated the application either by the omission to make a reasonable offer, or the rejection of such offer when made (*n*).

As to security for costs on appeal, see also Rule 158, and notes to Rule 176, *infra*.

(*h*) *The Lake Megantic*, 36 L. T. N. S. 183; 3 Asp. N. S. 382.

(*i*) *The Beatrice*, 36 L. J. Ad. 10; *The Newbattle*, 10 P. D. 33.

(*j*) *The Volant*, 1 W. Rob. 384.

(*k*) Wms. & B. 482.

(*l*) P. C. Rules of Dec. 11, 1865, Br. & L. 465, 467.

(*m*) *Grant v. The Banque Franco-Egyptienne*, L. R. 1 C. P. D. 143; L. R. 2 C. P. D. 430.

(*n*) *The Constantine*, 4 P. D. 156.

In England it is in the discretion of the court to allow Rules 135-140.
the mate of a foreign vessel though not domiciled there,
to prosecute an action for wages without giving security
for costs (o).

135. A party claiming an excessive amount, Party claiming an excessive amount.
either by way of claim, or of set-off or counter-
claim, may be condemned in all costs and damages
thereby occasioned.

136. If a tender is rejected, but is afterwards Tender re-
jected but
afterwards
accepted or
held sufficient.
accepted, or is held by the judge to be sufficient,
the party rejecting the tender shall, unless the
judge shall otherwise order, be condemned in the
costs incurred after tender made.

See notes to rules 85, 86 *ante*.

137. A party, who has not admitted any fact Party not
admitting
fact.
which in the opinion of the judge he ought to have
admitted, may be condemned in all costs occa-
sioned by the non-admission.

See Rules 74, 75, *ante*, as to admission of documents
and facts.

138. Any party pleading at unnecessary length Pleading at
unnecessary
length.
or taking any unnecessary proceeding in an action
may be condemned in all costs thereby occasioned.

See note to Rule 220.

TAXATION OF COSTS.

139. A party desiring to have a bill of costs Taxation of
costs.
Bill to be filed.
Appointment
and notice.
taxed shall file the bill, and shall procure an
appointment from the registrar for the taxation
thereof, and shall serve the opposite party with
notice of the time at which such taxation will take
place.

140. At the time appointed, if either party is Either party
present.
present, the taxation shall be proceeded with.

(o) *The Don Ricardo*, 5 P. D. 122.

Rules 141-145.

Review within
one week.

141. Within *one week* from the completion of the taxation application may be made, by either party, to the judge to review the taxation.

The court will not ordinarily interfere with the discretion of the registrar in the matter of taxation, excepting where such taxation may have been erroneous in principle (*p*).

Who may tax
costs.

142. Costs may be taxed either by the judge or by the registrar, and as well between solicitor and client, as between party and party.

Costs when
one-sixth
struck off in
taxation be-
tween solicitor
and client.

143. If in a taxation between solicitor and client more than *one-sixth* of the bill is struck off, the solicitor shall pay all the costs attending the taxation.

Fees of Dis-
trict Registrar

144. The fees to be taken by any district registrar shall, if either party desires it, be taxed by the judge.

As to costs generally, see Rule 132 and notes.

APPRAISEMENT AND SALE, ETC.

Property
under arrest
may be
ordered to be
appraised and
sold.

145. The judge may, either before or after final judgment, order any property under the arrest of the court to be appraised, or to be sold with or without appraisement, and either by public auction or by private contract, and may direct what notice by advertisement or otherwise shall be given or may dispense with the same.

Appraisement.—The commission directs the marshal to reduce into writing an inventory of the property, to choose proper persons to appraise the property according to its value, and then to have a certificate of such value reduced into writing signed by himself and the appraiser and filed in the proper registry, together with the commis-

(*p*) Wms. & B., 2nd Ed. 479; see also *The Karla*, Br. & L. 367.

sion. An official appraisalment is conclusive of the value of Rules 144-149.
the property (q).

Where parties insist on an official appraisalment, though the owners of the property have given in its fair value, they may have to bear the costs of the appraisalment (r).

If there is a substantial difference between the two valuations, the plaintiffs may be entitled to the costs of the appraisalment (s).

The court ordered the sale of a foreign ship on the report of the marshal that it was desirable she should be sold, and subject to the filing of an affidavit, verifying the cause of action and stating that no appearance had been entered (t).

An order will not be made for the sale of a vessel even upon the application of the owner, where such vessel is not proceeded against in the court (u).

146. If the property is deteriorating in value, Property deteriorating.
the judge may order it to be sold forthwith.

147. If the property to be sold is of small value, Property of small value.
the judge may, if he thinks fit, order it to be sold without a commission of sale being issued.

148. The judge may, either before or after final Removal of property under arrest.
judgment, order any property under arrest of the court to be removed, or any cargo under arrest on board ship to be discharged.

149. The appraisalment, sale, and removal of Vessel condemned under Slave Trade Act.
property, the discharge of cargo, and the demolition and sale of a vessel condemned under any Slave Trade Act, shall be effected under the authority of a commission addressed to the marshal.

(q) The cargo *ex Venus*, L. R. 1 Ad. 50.

(r) *The Commodore*, 1 Spk. 175n; Wms. & B. 310.

(s) *The Paul*, L. R. 1 A. & E. 57; 35 L. J. Ad. 16.

(t) *The Hercules*, 11 P. D. 10.

(u) *The Wexford*, 13 P. D. 10.

Rules 150-152. Forms of commissions of appraisement, sale, appraisement and sale, removal, discharge of cargo and demolition and sale will be found in the appendix hereto, Nos. 44 to 49.

If at the auction, where the sale is by auction, the biddings do not reach the appraised value, the property cannot be sold, but an order must be obtained from the judge for leave to sell it for a smaller sum, or for what it will fetch (*v*).

Commission to be filed with a return.

150. The commission shall, as soon as possible after its execution, be filed by the marshal, with a return setting forth the manner in which it has been executed.

Payment of proceeds into court.

151. As soon as possible after the execution of a commission of sale, the marshal shall pay into court the gross proceeds of the sale, and shall with the commission file his accounts and vouchers in support thereof.

When a sale has been effected of a ship or other property by the marshal, he delivers possession to the purchaser, where it is capable of delivery, and if required to do so executes a bill of sale to him. On production of the bill of sale, and an office copy of the order of court ordering the sale, to the officer of customs at the port of registry of the ship, a new certificate of registry will be granted to the purchaser. By the sale a perfect title is vested in the purchaser free from all suits and claims of every kind. All demands against the ship can, after the sale, only be enforced against the proceeds (*w*).

Marshal's or deputy marshal's account to be taxed.

152. The registrar shall tax the marshal's account, and shall report the amount at which he considers it should be allowed; and any party who is interested in the proceeds may be heard before the registrar on the taxation.

(*v*) Wms. & B. 313.

(*w*) Wms. & B. 313.

153. Application may be made to the judge on Rules 153-155.
motion to review the registrar's taxation.

Review of such
taxation.

154. The judge may, if he thinks fit, order
any property under the arrest of the court to be
inspected. A form of order for inspection will be
found in the appendix hereto, No. 50.

Inspection of
property
under arrest.

DISCONTINUANCE.

155. The plaintiff may, at any time, discon-
tinue his action by filing a notice to that effect,
and the defendant shall thereupon be entitled to
have judgment entered for his costs of action on
filing a notice to enter the same. The discon-
tinuance of an action by the plaintiff shall not
prejudice any action consolidated therewith or any
counter-claim previously set up by the defendant.
Forms of notice of discontinuance and of notice to
enter judgment for costs will be found in the
appendix hereto, Nos. 51 and 52.

Plaintiff may
discontinue
by filing
notice; costs
in such case.

Not to pre-
judice other
parties.

Where a plaintiff elects to discontinue his action before
trial, the ordinary rule is that he must pay defendant's
costs (x).

Where money has been paid into court in lieu of bail,
and the *res* has been arrested without due cause, if the
plaintiff discontinues his action he may be ordered to
pay interest on the sum paid into court, in addition
to costs (y).

In an action for damages by collision an agreement
was signed by the parties as follows;—"We hereby consent
to this action being discontinued without costs on the
ground of inevitable accident." Defendants afterwards
obtained the usual decree limiting their liability and paid a
sum into court. It was held that the plaintiffs might
claim against the fund in court; that the agreement and

(x) *The J. H. Henkes*, 12 P. D. 106.

(y) *The Western Ocean*, L. R. 3 Ad. 40.

Rules 156, 157. order for discontinuance operated as a discontinuance, and not as a release of the first action (z).

CONSENTS.

Consent in
writing an
order of court.

156. Any consent in writing signed by the parties may, by permission of the registrar, be filed, and shall thereupon become an order of court.

See instance of consent in note to preceding rule. See also *The Karo*, 13 P. D. 24.

It is the practice in the Admiralty Division (Eng.), for the parties in an action, by their solicitors, to enter into and file agreements such as here contemplated, *e. gr.* in a salvage case, agreeing upon the value of the ship, cargo and freight at the time of its being brought into safety; in cross-actions of damage, that the actions may be tried on the same evidence, or the same evidence and same pleadings; agreeing that the action and all matters in difference in the action be referred to the registrar, assisted by merchants, the defendant admitting his liability to the plaintiff for such amount as he may prove due (if any); or such other matters as may be the subject of such consent (a).

CERTIFICATE OF STATE OF ACTION.

Certificate of
state of action.

157. Upon the application of any person the registrar shall, upon payment of the usual fee, certify as shortly as he conveniently can, the several proceedings had in his office in any action or matter, and the dates thereof.

Certificates of the state of the action are taken out and filed wherever it is necessary upon any motion in chambers or in court to show the stage at which the proceedings may be at the time; *e. gr.* on a motion by the defendant to dismiss the action for want of prosecution where the plaintiff in an action *in personam*, or in an action *in rem*, being required to deliver a statement of claim, makes default in so doing. (See Williams & Bruce, *Ad. Prac.* 2nd ed., 355-

(z) *The Ardander*, 11 P. D. 40 C. A.

(a) *Wms. & B.* 2nd ed., 774.

357); also, where under Rule 115 or 118 application is made for leave to proceed, or to fix the time and place of trial. Rules 158, 159.

APPEAL FROM THE JUDGMENT OR ORDER OF A LOCAL JUDGE IN ADMIRALTY TO THE EXCHEQUER COURT.

Rules 158 to 176 (both inclusive) as well as Rule 224, and the Tables of Fees appended to these rules, are within the scope of s-s. 2 of s. 7 of *The Colonial Courts of Admiralty Act, 1890*, as being rules respecting matters of detail or local concern (*b*).

A construction is placed upon the expressions "appeal" and "local appeal," by s. 15, *Colonial Courts of Admiralty Act, 1890*, *q. v.*

158. Any person who desires to appeal to the Exchequer Court, from any judgment or order of a Local Judge in Admiralty of the said court, shall give security in the sum of two hundred dollars if such judgment or order is final, or if interlocutory, in the sum of one hundred dollars, to the satisfaction of such local judge, or of the judge of the Exchequer Court, that he will effectually prosecute his appeal and pay such costs as may be awarded against him by the Exchequer Court. If the appeal is by or on behalf of the Crown, no security shall be necessary.

Appeal to Exchequer Court, appellant to give security.

The Crown not required to give security.

The appeal may be direct to the Supreme Court of Canada from any final judgment, decree, or order of a local judge, subject to the provisions of the Exchequer Court Act regarding appeals (*c*).

A decree in an Admiralty action, fixing the liability, but leaving the damages to be assessed, is not final (*d*).

159. All appeals to the Exchequer Court from any judgment or order of any Local Judge in

All appeals to be by way of rehearing

(b) See Imp. Ord. in Council of March 15, 1893, (Appendix).

(c) See *The Admiralty Act, 1891*, s. 14, s-s. 2, p. 6, *ante*.

(d) *The Duke of Buccleugh, 1892*, P. (C. A.) 201.

Rules 160, 161.

Admiralty of the court shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. A form of notice of motion on appeal will be found in the appendix hereto, No. 53.

and may be
from whole or
part of judg-
ment.

Notice of
appeal, service
of.

160. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Exchequer Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Exchequer Court may think fit.

Notice may be
amended.

161. Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be *twenty days'* notice, and notice of appeal from any interlocutory order shall be a *ten days'* notice.

A notice of appeal from the former Maritime Court of Ontario served within fifteen days (the time prescribed by the rules of that court) of the formal entry of judgment,

but not within fifteen days of the handing of the judgment to the registrar, the latter not having been done in open court, was held good by the Supreme Court (*e*). Rule 162.

162. The Exchequer Court shall in any appeal have all its powers and duties as to amendment and otherwise, together with full discretionary power to receive further evidence upon questions of fact, —such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after the trial or hearing of any cause or matter upon their merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such power may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just. Power in appeal to receive further evidence.
Costs of appeal.

(*e*) *The St. Magnus*,—Robertson v. Wigle, 15 S. C. R. 214.

Rules 163, 164.

The appellate court in Admiralty cases endeavours to find out the real merits of the question without requiring that rules of practice should be strictly conformed to (*f*).

In salvage cases, if the justice of the case requires it, a court of appeal will increase the amount (*g*).

The Court of Appeal (Eng.), upon appeal from a judgment after trial or hearing of any cause or matter upon the merits, save as to matters arising subsequently to the decision appealed from, admits further evidence on special grounds only, and not without special leave of the court (*h*). Leave to adduce further evidence was refused in the case of the *Scindia*, *supra* (*i*).

New trial.

163. If, upon the hearing of any appeal, it shall appear to the Exchequer Court, that a new trial ought to be had, it shall be lawful for the said court, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

Where a disputed fact involving nautical questions was raised by an appeal from judgment of Maritime Court of Ontario, as in case of a collision, the Supreme Court would not reverse the decision of court below merely on balance of testimony (*j*).

Respondent
need not give
notice of
motion by
way of cross-
appeal.

164. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the local judge in Admiralty should be varied, he shall within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties

(*f*) *The Sally*, 2 C. Rob. 229; *Le Louis*, 2 Dods. 239.

(*g*) *The Scindia*, L. R. 1 P. C. 241; 4 Moo. P. C. N. S. 84.

(*h*) Wms. & B. 2nd Ed. 553.

(*i*) See also *Guimaraens v. Preston, The Ship Thirteenth of June*, 4 Moo. P. C. 167; *Hocguard v. Reg., The Newport*, 11 Moo. P. C. 155.

(*j*) *The Picton*, 4 S. C. R. 648.

who may be affected by such contention. The Rules 165-168.
 omission to give such notice shall not in any way
 interfere with the power of the court on the hear-
 ing of the appeal to treat the whole case as open,
 but may, in the discretion of the court, be ground
 for an adjournment of the appeal, or for a special
 order as to costs. *

165. Subject to any special order which may <sup>What notice
respondent to
give.</sup>
 be made, notice by a respondent under the last
 preceding rule shall, in the case of any appeal
 from a final judgment, be a *fourteen days'* notice,
 and, in the case of an appeal from an interlocutory
 order, a *seven days'* notice.

166. The party appealing from a judgment or <sup>Entering ap-
peal.</sup>
 order shall produce to the registrar of the Exchequer
 Court the judgment or order or an office copy there-
 of, and shall leave with him a copy of the notice of
 appeal to be filed, and such officer shall thereupon
 set down the appeal by entering the same in the
 proper list of appeals, and it shall come on to be
 heard according to its order in such list unless the
 Judge of the Exchequer Court shall otherwise
 direct, but so as not to come into the paper for
 hearing before the day named in the notice of
 appeal.

167. Where an *ex parte* application has been re- <sup>Appeal from
refusal of
ex parte ap-
plication.</sup>
 fused by the Local Judge in Admiralty, an applica-
 tion for a similar purpose may be made to the
 Exchequer Court *ex parte* within *ten days* from the
 date of such refusal, or within such enlarged time
 as the Judge of the Exchequer Court may allow.

168. When any question of fact is involved in <sup>Questions of
fact, evidence</sup>
 an appeal, the evidence taken before the Local Judge

Rules 169-172. in Admiralty bearing on such question shall, subject to any special order, be brought before the Exchequer Court as follows :—

- (a) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed ;
- (b) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the court may deem expedient.

Judge may
order evidence
to be printed.

169. Where evidence has not been printed in the proceedings before the Local Judge in Admiralty, the Local Judge in Admiralty, or the Judge of the Exchequer Court, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Judge of the Exchequer Court shall otherwise order.

Questions as
to ruling of
Local Judge.

170. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Local Judge, the Exchequer Court shall have regard to verified notes or other evidence, and to such other materials as the court may deem expedient.

Interlocutory
order not
appealed from
not to bar
Exchequer
Court.

171. Upon any appeal to the Exchequer Court no interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Exchequer Court from giving such decision upon the appeal as may be just.

Limitation of
time for ap-
peal.

172. No appeal to the Exchequer Court from any interlocutory order, or from any order, whether

final or interlocutory, in any matter not being an Rules 173-176. action, shall, except by special leave of the Exchequer Court, be brought after the expiration of *thirty days*, and no other appeal shall, except by such leave, be brought after the expiration of *sixty days*. The said respective periods shall be calculated, in the case of an appeal from an order in Chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or in the case of the refusal of an application, from the date of such refusal.

173. An appeal shall not operate as a stay of Stay of proceedings if ordered. execution or of proceedings under the decision appealed from, except so far as the Local Judge in Admiralty, or the Exchequer Court may order; and no intermediate act or proceeding shall be invalidated, except so far as the Judge of the Exchequer Court may direct.

174. Wherever under Rules 158 to 176 an application may be made either to the Local Judge in Application, first to local judge. Admiralty or to the Exchequer Court, or the Judge thereof, it shall be made in the first instance to the Local Judge in Admiralty.

175. Every application in respect to any appeal By motion. to the Exchequer Court or the Judge thereof shall be by motion.

176. On appeal from a Local Judge in Admir- Interest. alty, interest for such time as execution has been delayed by the appeal shall be allowed unless the Local Judge otherwise orders, and the taxing

Rule 177.

officer may compute such interest without any order for that purpose.

Appeal from
Exchequer to
Supreme
Court.

The foregoing Rules 158-176 relate to appeals from a local judge in Admiralty to the Exchequer Court of Canada. On appeals from the Exchequer Court to the Supreme Court of Canada, there is an appealable value fixed at \$500. The amount to be deposited with the Registrar of the Supreme Court by way of security for costs is \$50 (*k*).

From Supreme
Court to the
Privy Council.

By 3 & 4 Will. IV. c. 41, the appeal from Vice-Admiralty Courts which had formerly been to the High Court of Admiralty, were thereafter to be to the Privy Council, and they were so continued under the operation of the Vice-Admiralty Courts Act, 1863, now repealed by *The Colonial Courts of Admiralty Act, 1890*; which latter enactment, however, still continues the appeal from such courts, that is to say, from the Colonial Courts of Admiralty thereby created, to Her Majesty in Council (*l*); re-enacting substantially the provisions of the former Acts regarding appeals from Vice-Admiralty Courts, and providing that after a decision on local appeal, *i.e.*, in the case of Canada, a decision by the Supreme Court, upon an appeal from the Exchequer Court or from a local judge in Admiralty, there shall be an appeal to Her Majesty in Council. Such appeal being governed by the further provisions of the Act, and also by rules of the Judicial Committee of the Privy Council established by order in council.

PAYMENTS INTO COURT.

Receivable
order.

177. All moneys to be paid into court shall be paid, upon receivable orders to be obtained in the registry, to the account of the registrar at some bank in the Dominion of Canada to be approved by the judge, or, with the sanction of the treasury board, into the treasury of the Dominion. A

(*k*) 53 Vict. c. 35.

(*l*) *C. C. A. Act, 1890*, s. 6. See Appendix.

form of receivable order will be found in the Rules 178-180. appendix hereto, No. 54.

178. A bank or treasury receipt for the amount ^{Receipt.} shall be filed, and thereupon the payment into court shall be deemed to be complete.

PAYMENTS OUT OF COURT.

179. No money shall be paid out of court except upon an order signed by the judge. On signing a receipt to be prepared in the registry, the party to whom the money is payable under the order will receive a cheque for the amount signed by the registrar, upon the bank in which the money has been lodged, or an order upon the treasurer in such form as the treasury board shall direct. A form of order for payment out of court will be found in the appendix hereto, No. 55.

CAVEATS.

180. Any person desiring to prevent the arrest of any property may file a notice, undertaking, within *three days* after being required to do so, to give bail to any action or counter-claim that may have been, or may be, brought against the property, and thereupon the registrar shall enter a caveat in the caveat warrant book hereinafter mentioned. Forms of notice and a caveat warrant will be found in the appendix hereto, Nos. 56 and 57.

The instrument here called a notice is in the High Court (Eng.) in Admiralty called a *precipe*. In the latter the party undertakes to enter an appearance, as well as to give bail (m). See Rule 228 *infra*, as to cases not provided for by these rules.

(m) Wms. & B. 2nd Ed. 637.

Rules 181-185.

181. Any person desiring to prevent the release of any property under arrest, shall file a notice, and thereupon the registrar shall enter a caveat in the caveat release book hereinafter mentioned. Forms of notice and of caveat release will be found in the appendix hereto, Nos. 58 and 59.

Where a caveat release is entered, and groundless objections are taken to the sufficiency of bail, the party entering the caveat may be condemned in damages and costs (n); and see Rule 185, *infra*.

Caveat payment.

182. Any person desiring to prevent the payment of money out of court shall file a notice, and thereupon the registrar shall enter a caveat in the caveat payment book hereinafter mentioned. Forms of notice and of caveat payment will be found in the appendix hereto, Nos. 60 and 61.

Address of caveator.

183. If the person entering a caveat is not a party to the action, the notice shall state his name and address, and an address within three miles of the registry at which it shall be sufficient to leave all documents required to be served upon him.

Arrest of property against caveat.

184. The entry of a caveat warrant shall not prevent the issue of a warrant, but a party at whose instance a warrant shall be issued for the arrest of any property in respect of which there is a caveat warrant outstanding, shall be condemned in all costs and damages occasioned thereby, unless he shall show to the satisfaction of the judge good and sufficient reason to the contrary.

Caveat notice for arrest.

185. The party at whose instance a caveat release or caveat payment is entered, shall be condemned in all costs and damages occasioned there-

(n) *The Don Ricardo*, 5 P. D. 121.

by, unless he shall show to the satisfaction of the ^{Rules 136-139} judge good and sufficient reason to the contrary.

186. A caveat shall not remain in force for ^{Caveat in force six months.} more than *six months* from the date of entering the same.

187. A caveat may at any time be withdrawn ^{Withdrawal of caveat.} by the person at whose instance it has been entered, on his filing a notice withdrawing it. A form of notice of withdrawal will be found in the appendix hereto, No. 62.

188. The judge may overrule any caveat. ^{Overruling.}

An application on special grounds may be made at any time to the judge on motion to overrule a caveat warrant (*o*).

And any of the parties to an action may make application to the judge to overrule a caveat release or a caveat payment, on the hearing of which the court may adjudicate upon the claim of the party on whose behalf the caveat has been entered. And in some cases the rights of the parties will be decided on application being made for the release of the property, or for payment of the proceeds out of court (*p*).

SUBPŒNAS.

189. Any party desiring to compel the attend- ^{Subpœna.} ance of a witness shall serve him with a subpœna, which shall be prepared by the party and issued under the seal of the court. Forms of subpœnas will be found in the appendix hereto, Nos. 63 and 64.

The process of the Exchequer Court of Canada runs throughout Canada (*q*).

(*o*) Wms. & B. 2nd Ed. 256.

(*p*) *Ibid.* 306.

(*q*) 50 & 51 V. c. 6, s. 42.

Rules 190-194.

Names of witnesses.

190. A subpoena may contain the names of any number of witnesses, or may be issued with the names of the witnesses in blank.

Service.

191. Service of the subpoena must be personal, and may be made by the party or his agent, and shall be proved by affidavit.

ORDERS FOR PAYMENT.

Orders for payment out of court;

192. On application by a party to whom any sum has been found due, the judge may order payment to be made out of any money in court applicable for the purpose.

or by party liable.

If there is no such money in court, or if it is insufficient, the judge may order that the party liable shall pay the sum found due, or the balance thereof, as the case may be, within such time as to the judge shall seem fit. The party to whom the sum is due may then obtain from the registry and serve upon the party liable an order for payment under seal of the court. A form of order for payment will be found in the appendix hereto, No. 65.

ATTACHMENTS.

Attachment for contempt.

193. If any person disobeys an order of the court, or commits a contempt of court, the Judge may order him to be attached. A form of attachment will be found in the appendix hereto, No. 66.

Committal.

194. The person attached shall, without delay, be brought before the judge, and if he persists in his disobedience or contempt, the judge may order him to be committed. Forms of order for committal and of committal will be found in the appendix hereto, Nos. 67 and 68.

Executed by marshal.

The order for committal shall be executed by the marshal.

EXECUTION.

Rules 195, 196.

195. Any decree or order of the court, made in the exercise of its Admiralty jurisdiction, may be enforced in the same manner as a decree or order made in the exercise of the ordinary civil jurisdiction of the court may be enforced.

Enforcing decrees or orders.

Where, in an Admiralty cause in the High Court, England, the defendants appeared and gave an undertaking, upon which the *res* was not arrested, plaintiffs obtained leave to issue a *fiery facias* under the following circumstances:—In an action *in rem* for salvage services the writ was directed in the usual form “to the owners and parties interested” in the *res*, and indorsed with a claim for £5,000. The owners of the salved ship, her cargo, and freight, appeared as defendants, and through their solicitor gave an undertaking to put in bail for the above amount, and the plaintiffs did not arrest the vessel, or interfere with the discharge of the cargo. At the hearing the court awarded plaintiffs £7,500; and the indorsement on the writ was allowed to be amended by increasing the amount to £8,500. The defendants denied their liability in respect of the amount awarded beyond the amount of the undertaking to put in bail, viz., £5,000.

It was held upon motion that the remedy was not limited to the amount of the undertaking to put in bail, and that the plaintiffs were entitled in the present action to sue out writs of *fiery facias*, in order to enforce payment from the defendants personally of the full amount of the decree (r).

As to writs of *fiery facias*, see Exchequer Court Rule 188 *et seq.*, and forms in schedule thereto.

SEALS.

196. The seals to be used in the registry and district registries shall be such as the Judge of the Exchequer Court may from time to time direct.

Seals.

(r) *The Dictator*, 1892, P. 304.

Rules 197-202.

INSTRUMENTS, ETC.

Instruments
prepared in
registry.

197. Every warrant, release, commission, attachment, and other instrument to be executed by any officer of, or commissioner acting under the authority of, the court, shall be prepared in the registry and signed by the registrar, and shall be issued under the seal of the court.

Date and seal-
ing.

198. Every document issued under the seal of the court shall bear date on the day of sealing and shall be deemed to be issued at the time of the sealing thereof.

Served within
12 months.

199. Every document requiring to be served shall be served within *twelve months* from the date thereof, otherwise the service shall not be valid.

Left with
marshal.

200. Every instrument to be executed by the marshal shall be left with the marshal by the party at whose instance it is issued, with written instructions for the execution thereof.

NOTICES FROM THE REGISTRY.

Notices from
the registry.

201. Any notice from the registry may be either left at, or sent by post by registered letter, to the address for service of the party to whom notice is to be given; and the day next after the day on which the notice is so posted shall be considered as the day of service thereof, and the posting thereof as aforesaid shall be a sufficient service.

FILING.

Filing docu-
ments.

202. Documents shall be filed by leaving the same in the registry, with a minute stating the nature of the document and the date of filing it. A form of minute on filing any document will be found in the appendix hereto, No. 69.

203. Any number of documents in the same Rules 203-207.
action may be filed with one and the same minute.

TIME.

204. If the time for doing any act or taking Time.
any proceeding in an action expires on a Sunday,
or on any other day on which the registry is
closed, and by reason thereof such act or proceed-
ing cannot be done or taken on that day, it may
be done or taken on the next day on which the
registry is open.

205. Where, by these rules or by any order First day ex-
clusive.
made under them, any act or proceeding is ordered
or allowed to be done within or after the expiration
of a time limited from or after any date or event,
such time, if not limited by hours, shall not include
the day of such date or of the happening of such
event, but shall commence on the next following
day.

206. The judge may, on the application of Judge may
enlarge or
abridge time.
either party, enlarge or abridge the time prescribed
by these rules or forms or by any order made under
them for doing any act or taking any proceeding,
upon such terms as to him shall seem fit, and any
such enlargement may be ordered although the
application for the same is not made until after
the expiration of the time prescribed.

SITTINGS OF THE COURT.

207. The judge shall appoint proper and con- Judge to ap-
point sittings.
venient times for sittings in court and in chambers,
and may adjourn the proceedings from time to
time and from place to place as to him shall seem
fit.

Rules 208-213.**REGISTRY AND REGISTRAR.****Registry hours.**

208. The registry shall be open to suitors during fixed hours to be appointed by the judge.

Attendance at sittings.

209. The registrar shall obey all the lawful directions of the judge. He shall in person, or by a deputy approved of by the judge, attend all sittings whether in court or in chambers, and shall take minutes of all the proceedings. He shall have the custody of all records of the court. He shall not act as counsel or solicitor in the court.

MARSHAL.**Marshal to execute instruments.**

210. The marshal shall execute by himself or his officer all instruments issued from the court which are addressed to him, and shall make returns thereof.

Or employ competent person.

211. Whenever, by reason of distance or other sufficient cause, the marshal cannot conveniently execute any instrument in person, he shall employ some competent person as his officer to execute the same.

HOLIDAYS.**Holidays.**

212. The registry and the marshal's office shall be closed on Sundays, Good Friday, Easter Monday, Easter Tuesday, and Christmas Day, and on such days as are appointed by law or by proclamation to be kept as holidays or fast days.

RECORDS OF THE COURT.**Records of court; minute book.**

213. There shall be kept in the registry a book, to be called the minute book, in which the registrar shall enter in order of date, under the head of each action, and on a page numbered with the number of the action, a record of the commencement of

the action, of all appearances entered, all documents issued or filed, all acts done, and all orders and decrees of the court, whether made by the judge, or by the registrar, or by consent of the parties in the action. Forms of minute of order of court, of minute on examination of witnesses, of minute of decree, and of minutes in an action for damage by collision, will be found in the appendix hereto, Nos. 70 to 73. Rules 214-219.

214. There shall be kept in the registry a caveat warrant book, a caveat release book, and a caveat payment book, in which all such caveats, respectively, and the withdrawal thereof, shall be entered by the registrar. Caveat books.

215. Any solicitor may inspect the minute and caveat books. Inspection by solicitors.

216. The parties to an action may, while the action is pending, and for *one year* after its termination, inspect, free of charge, all the records in the action. By parties.

217. Except as provided by the two last preceding rules, no person shall be entitled to inspect the records in a pending action without the permission of the registrar. No other persons.

218. In an action which is terminated, any person may, on payment of a search fee, inspect the records in the action. If action terminated; search fee.

COPIES.

219. Any person entitled to inspect any document in an action shall, on payment of the proper charges for the same, be entitled to an office copy thereof under seal of the court. Office copies.

Rules 220-224.

FORMS.

Forms.

220. The forms in the appendix to these rules shall be followed with such variations as the circumstances may require, and any party using any other forms shall be liable for any costs occasioned thereby.

As to the forms of pleadings appended to the Admiralty Rules of the High Court, England, it was said by Sir J. Hannen that those forms were only to be taken as specimens of the character of the pleadings, and were not to be slavishly adhered to, though the pleader must endeavour to state the case in as succinct a form as possible; observing at the same time that his decision applied only to the particular case before him (s).

FEES.

Fees.

221. Subject to the following rules, the fees set forth in the tables of fees in the appendix hereto shall be allowed on taxation.

In registry at
Ottawa to be
in stamps.

222. In any proceeding instituted in the registry at Ottawa the fees to be taken by the registrar shall be paid in stamps, and the proceeds of the sale of such stamps shall be paid into the Consolidated Revenue Fund of Canada.

Folio, 100
words.

223. Where the fee is per folio, the folio shall be counted at the rate of 100 words, and every numeral, whether contained in columns or otherwise written, shall be counted and charged for as a word.

Half-fees.

224. Where the sum in dispute does not exceed \$200, or the value of the *res* does not exceed \$400, one-half only of the fees (other than disbursements) set forth in the table hereto annexed shall be charged and allowed.

(s) *The Isis*, 8 P. D. 227.

225. Where costs are awarded to a plaintiff ^{Rules 225-229.} the expression "sum in dispute" shall mean the "Sum in dispute." sum recovered by him in addition to the sum, if any, counter-claimed from him by the defendant; and where costs are awarded to a defendant, it shall mean the sum claimed from him in addition to the sum, if any, recovered by him.

226. The judge may, in any action, order that ^{Half-fees.} half fees only shall be allowed.

227. If the same practitioner acts as both ^{Acting both as counsel and solicitor.} counsel and solicitor in an action, he shall not for any proceeding be allowed to receive fees in both capacities, nor to receive a fee as counsel where the act of a solicitor only is necessary.

CASES NOT PROVIDED FOR.

228. In all cases not provided for by these ^{Practice in Admiralty, H. C. J. England.} Rules the practice for the time being in force in respect to Admiralty proceedings in the High Court of Justice in England shall be followed.

The practice in Admiralty proceedings in England is governed by the Rules of the Supreme Court, 1883, one of which provides that where no other provision is made by the Judicature Acts or Rules, the procedure and practice existing at the time of the passing of such rules shall remain in force; as to which it is said, that to a great extent the procedure and practice thus remaining in force is the procedure and practice founded on the Rules of 1859, viz., of the former High Court of Admiralty (t).

COMMENCEMENT OF RULES.

229. These Rules shall come into force on the ^{These Rules in force on notice in Gazette.} day on which notice of the approval thereof by His Excellency the Governor-General in Council, and by Her Majesty in Council shall be published

(t) Wms. & B. 2nd ed., 505.

Rule 230. in the *Canada Gazette*, and shall apply to all actions then pending in the Exchequer Court of Canada on its Admiralty side, as well as to actions commenced on and after such day (*u*).

REPEALING CLAUSE.

Rules repealed 230. From and after the day on which the notice of the approval of these Rules by His Excellency the Governor-General in Council and by Her Majesty in Council, is published in the *Canada Gazette*, the following rules and regulations, together with all forms thereto annexed, and the table of fees now in force in the Exchequer Court in Admiralty proceedings, shall, in respect to any such proceeding in such court be repealed:—

V. A. Rules,
1883.

(a) The rules and tables of fees for the Vice-Admiralty Courts established by an Order of Her Majesty in Council of the 23rd of August, 1883; and

M. C. Ontario
Rules.

(b) The rules and regulations and the table of fees previously in force in the Maritime Court of Ontario, and made by the judge of such court on the 31st day of January, 1889, and approved by His Excellency the Governor-General in Council on the 14th day of February, 1879, and all rules of the said Maritime Court of Ontario.

Dated, at Ottawa, this 5th day of December, A.D., 1892.

GEO. W. BURBIDGE,
J. E. C.

(u) See note p. 1, *ante*, and Orders in Council, *post*.

APPENDIX.

I. FORMS.

No. 1.

[Rule 4.]

TITLE OF COURT.

IN THE EXCHEQUER COURT OF CANADA.

IN ADMIRALTY.

or (if instituted in a District Registry)

IN THE EXCHEQUER COURT OF CANADA.

THE QUEBEC *(or as the case may be)* ADMIRALTY DISTRICT.

No. 2.

[Rule 4.]

TITLE OF ACTION IN REM.

[*Title of court.*]

No. [*here insert the number of the action.*]

A. B., Plaintiff,

against

(a) The ship

or (b) The ship

or (c) The ship

and freight.

her cargo and freight.

or (if the action is against cargo only),

(d) The cargo *ex* the ship [*state name of ship on board of which the cargo now is or lately was laden.*]

or (if the action is against the proceeds realized by the sale of the ship or cargo),

(e) The proceeds of the ship

or (f) The proceeds of the cargo ex the ship
or as the case may be.

Action for [*state nature of action, whether for damage by collision, wages, bottomry, &c., as the case may be.*]

Rule 4.]

No. 3.

TITLE OF ACTION IN PERSONAM.

[*Title of court.*]

No. [here insert the number of the action.]

A. B., Plaintiff

against

The owners of the ship [or as the case may be].

Action for [state nature of action as in preceding form].

Rule 4.]

No. 4.

TITLE OF ACTION IN THE NAME OF THE CROWN.

[*Title of court.*]

No. [insert number of action].

Our Sovereign Lady the Queen.

[add, where necessary, in Her office of Admiralty].

against

(a) The ship , [or as the case may be],

or,

(b) A. B. &c., [the person or persons proceeded against.]

Action for [state nature of action].

Rule 5.]

No. 5.

WRIT OF SUMMONS IN REM.

(L.S.)

[*Title of court and action.*]

VICTORIA, by the grace of God, of the United Kingdom
of Great Britain and Ireland, Queen, Defender of the
Faith, Empress of India.

To the owners and all others interested in the ship
[her cargo and freight, etc., or as the case may be].

WE command you that, within one week after the service of this writ, exclusive of the day of such service, you

do cause an appearance to be entered for you in our Exchequer Court of Canada in the above-named action; and take notice that in default of your so doing the said action may proceed, and judgment may be given, in your absence.

Given at Ottawa (*or as the case may be*) in our said court, under the seal thereof, this day of
18 .

Memorandum to be subscribed on the writ.

This writ may be served within *twelve months* from the date thereof, exclusive of the day of such date, but not afterwards.

The defendant (*or defendants*) may appear hereto by entering an appearance (*or appearances*) either personally or by solicitor at the registry of the said court situate at Ottawa (*or as the case may be*).

No 6.

[Rule 5.]

WRIT OF SUMMONS IN PERSONAM.

[*Title of court and action*].

(L.S.) VICTORIA, by the grace of God, etc.

To C. D., of , and E. F., of .

We command you that, within *one week* after the service of this writ, exclusive of the day of such service, you do cause an appearance to be entered for you in our Exchequer Court of Canada, in the above-named action; and take notice that in default of your so doing the said action may proceed, and judgment may be given, in your absence.

Given at Ottawa (*or as the case may be*) in our said court, under the seal thereof, this day
of 18 .

Memorandum to be subscribed on the Writ.

This writ may be served within *twelve months* from the date thereof, exclusive of the day of such date, but not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the registry of the said court situate at Ottawa (or as the case may be).

Rules 5-20-23.]

No. 7.

WRIT OF SUMMONS IN PERSONAM FOR SERVICE OUT OF JURISDICTION.

(L.S.) [Title of court and action.]

VICTORIA, by the grace of God, etc.

To C. D., of , E. F., of .

We command you that within (here insert the number of days directed by the judge ordering the service or notice) after the service of this writ (or notice of this writ, as the case may be), on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Exchequer Court of Canada, in the above-named action, and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Given at Ottawa (or as the case may be) in our said court, under the seal thereof, this day of
18 .

Memorandum to be subscribed on Writ as in Form No. 6.

Indorsement to be made on the Writ before the issue thereof.

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself, is to be served upon him.

No. 8.

[Rules 23-24.]

NOTICE IN LIEU OF WRIT FOR SERVICE OUT OF JURISDICTION.

[Title of court and action.]

To C. D., of .

Take notice that A. B., of , has commenced an action against you, C. D., in the Exchequer Court of Canada at Ottawa, (or in the Admiralty District, as the case may be), by writ of that court, dated the day of A.D. 18 , which writ is indorsed as follows: (*Copy in full the indorsements*), and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action, and in default of your so doing the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the office of the registrar of the said court at Ottawa (or at in the Admiralty District, as the case may be).

(Signed) A. B., of etc.

Or X. Y., of

Solicitor for A. B.

No. 9.

[Rule 5.]

INDORSEMENTS TO BE MADE ON THE WRIT BEFORE ISSUE THEREOF.

(1) The plaintiff claims [*insert description of claim as given in Form No. 10*].

(2) This writ was issued by the plaintiff in person, who resides at [*state plaintiff's place of residence, with name of street and number of house, if any*].

or,

This writ was issued by C. D., of [*state place of business*] solicitor for the plaintiff.

(3) All documents required to be served upon the said plaintiff in the action may be left for him at [insert address for service within three miles of the registry].

or,

Where the Action is in the Name of the Crown.

(1) A. B., etc., claims [insert description of claim as given in Form No. 10.]

(2) This writ was issued by A. B. [state name and address of person prosecuting in the name of the Crown, or his solicitor, as the case may be.]

(3) All documents required to be served upon the Crown in this action may be left at [insert address for service within three miles of the registry].

Rule 5.]

No. 10.

INDORSEMENTS OF CLAIM.

(1) *Damage by collision :*

The plaintiffs as owners of the ship "*Mary*" [her cargo and freight, &c., or as the case may be] claim the sum of \$ against the ship "*Jane*" for damage occasioned by a collision which took place [state where] on the day of , and for costs.

(2) *Salvage :*

The plaintiffs, as the owners, master, and crew of the Ship "*Mary*" claim the sum of \$ for salvage services rendered by them to the ship "*Jane*" [her cargo and freight &c., or as the case may be] on the day of 18 , in or near [state where the services were rendered], and for costs.

(3) *Pilotage :*

The plaintiff claims the sum of \$ for pilotage of the ship "*Jane*" on the day of 18 from [state where pilotage commenced] to [state where pilotage ended], and for costs.

Rule 6.]

(4) *Towage :*

The plaintiffs, as owners of the ship "*Mary*," claim the sum of \$ for towage services rendered by the said ship to the ship "*Jane*" [her cargo and freight, &c., or as the case may be], on the day of 18 ,

at or near [state where the services were rendered], and for costs.

(5) *Master's wages and disbursements :*

The plaintiff claims the sum of \$, for his wages and disbursements as master of the ship "*Mary*," and to have an account taken thereof, and for costs.

(6) *Seamen's wages :*

The plaintiffs, as seamen on board the ship "*Mary*" claim the sum of \$, for wages due to them, as follows, and for costs :

to A.B., the mate, \$, for two months wages from the day of .

to C.D., able seaman \$, &c., &c.;
[and the plaintiffs claim to have an account taken thereof.]

(7) *Necessaries, repairs, &c. :*

The plaintiffs claim the sum of \$, for necessities supplied (or repairs done, &c., as the case may be) to the ship "*Mary*" at the port of on the day of , and for costs [and the plaintiffs claim to have an account taken thereof].

(8) *Possession :*

(a.) The plaintiff, as sole owner of the ship "*Mary*" of the port of , claims possession of the said ship.

(b.) The plaintiff, as owner of 48-64th shares of the ship "*Mary*" of the port of , claims possession of the said Ship against C.D., owner of 16-64th shares of the same Ship.

(9) *Mortgage :*

The plaintiff, under a mortgage dated the day of , claims against the Ship "*Mary*," [or the proceeds of the ship "*Mary*," or as the case may be], the sum of \$, as the amount due to him for principal and interest, and for costs.

(10) *Claims between Co-Owners :*

(a.) The plaintiff, as part owner of the ship "*Mary*," claims against C.D., part owner of the same ship, the sum of \$, as part of the earnings of the said ship due to the plaintiff, and for costs; and to have an account taken thereof.

(b.) The plaintiff, as owner of 24-64th shares of the ship "*Mary*" being dissatisfied with the management of the said ship by his co-owners, claims that his co-owners

shall give bail in the sum of \$, the value of his said shares, for the safe return of the ship to the Dominion of Canada [or to the District, as the case may be].

(11) *Bottomry* :

The plaintiff, as assignee of a bottomry bond, dated the day of , and granted by C.D., as master of the ship "*Mary*" of , to A.B. at the port of , claims the sum of \$ against the ship "*Mary*" [her cargo and freight, &c., or as the case may be,] as the amount due to him under the said bond, and for costs.

(12) *Derelict* :

A.B., claims to have the derelict ship "*Mary*" [or cargo, &c., as the case may be,] condemned as forfeited to Her Majesty in Her Office of Admiralty.

(13) *Piracy* :

A.B., Commander of H.M.S. "*Torch*," claims to have the Chinese junk "*Tecumseh*" and her cargo condemned as forfeited to Her Majesty as having been captured from pirates.

(14) *Slave Trade* :

A.B., Commander of H.M.S. "*London*" claims to have the vessel, name unknown [together with her cargo and 12 slaves] seized by him on the day of 18 , condemned as forfeited to Her Majesty, on the ground that the said vessel was at the time of her seizure engaged in or fitted out for the slave trade, in violation of existing treaties between Great Britain and Zanzibar (or of the Act 5 Geo. IV. c. 113, or as the case may be).

or

C.D., the owner of the vessel [and cargo, or as the case may be] captured by H.M.S. "*London*" on the day of 18 , claims to have the said vessel [and cargo, or as the case may be] restored to him [together with costs and damages for the seizure thereof].

(15) *Under Pacific Islander's Protection Acts* :

A.B., as Commander of H.M.S. "*Lynx*," claims to have the British ship "*Mary*" and her cargo condemned as forfeited to Her Majesty, for violation of the Pacific Islanders Protection Acts, 1872 and 1875.

(16) *Under Foreign Enlistment Act* :

A.B., claims to have the British ship "*Mary*" together with the arms and munitions of war on board thereof, con-

demned as forfeited to Her majesty for violation of the Foreign Enlistment Act, 1870.

(17) *Under Customs Acts :*

A. B. claims to have the ship "*Mary*" [or as the case may be] condemned as forfeited to Her Majesty for violation of [state Act under which forfeiture is claimed].

(18) *Recovery of pecuniary forfeiture or penalty:*

A. B., claims judgment against the defendant for penalties for violation of [state Act under which penalties are claimed.]

No. 11.

[Rule 18.]

AFFIDAVIT OF SERVICE OF A WRIT OF SUMMONS.

[Title of court and action.]

County of }

I, A. B., of in the county of
[calling or occupation] make oath and say :

1. That I did on the day of 18
serve the writ of summons herein by [here state the mode in
which the service was effected, whether on the owner or on the
ship, cargo or freight, &c., as the case may be] on the
day of 18

(Signed)

A. B.

SWORN before me, &c.

A Commissioner, &c.

No. 12.

[Rule 28.]

APPEARANCE.

(1) *By defendant in person.*

[Title of court and action.]

Take notice that I appear in this action,

Dated this day of 18
(Signed) C. D., defendant.

My address is

My address for service is

the ship "*Mary*" and her cargo [or the vessel, name unknown, or the cargo *ex* the ship "*Mary*," &c., or as the case may be] condemned to Her Majesty ;—

- (a) as having been fitted out for or engaged in the slave trade in violation of [state Act or Treaty alleged to have been violated] ;
- or (b) as having been captured from pirates ;
as having been found derelict ;
- or (d) for violation of [state Act alleged to have been violated, or as the case may be].

I further make oath and say that the aid of this court is required to enforce the said claim.

On the day of 18 ,
the said A.B. was duly sworn to } (Signed) A.B.
the truth of this affidavit at

Before me,
E.F., &c.

No. 15.

[Rule 40.]

WARRANT.

(L.S.) (Title of court and action.)

VICTORIA, &c.

To the Marshal of the Admiralty District of
[or Sheriff of the county of or as the case may be].

We hereby command you to arrest the ship
her cargo and freight, &c., [or as the case may be], and to
keep the same under safe arrest, until you shall receive
further orders from us.

Given at in our said court, under the seal
thereof, this day of 18

Warrant

Taken out by

(Signed) E.F.,

Registrar (or District Registrar, as the case may be.)

Rule 44.]

No. 16.

CERTIFICATE OF SERVICE TO BE INDORSED ON THE WARRANT
AFTER SERVICE THEREOF.

This warrant was served by [state by whom and in what
mode service was effected] on the day
of 18 .

(Signed) G.H.,

Marshal of the Admiralty District of [or,
sheriff of the county of , or as the case may be.

Rule 46.]

No. 17.

BAILBOND.

[Title of court and action.]

Know all men by these presents that we [insert names,
addresses and descriptions of the sureties in full] hereby
jointly and severally submit ourselves to the jurisdiction
of the said court, and consent that if the said [insert name
of party for whom bail is to be given, and state whether
plaintiff or defendant], shall not pay what may be adjudged
against him in the above named action, with costs [or, for
costs, if bail is to be given only for costs], execution may
issue against us, our heirs, executors and administrators,
goods and chattels, for a sum not exceeding [state sum in
letters] dollars.

This bailbond was signed by
the said and
the sureties, the day of
18 , in the registry
of the Exchequer Court of Can-
ada [or as the case may be].

Signatures of sureties.

Before me,

E. F.,

Registrar, or District Registrar,

[or clerk in the registry, or Commis-
sioner to take bail, or as the case
may be].

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dollar

No. 18.

[Rule 46.]

COMMISSION TO TAKE BAIL.

[Title of court and action.]

[L.S.] VICTORIA, ETC.

To [state name and description of commissioner], greeting.

Whereas in the above-named action bail is required to be taken on behalf of [state name of party for whom bail is to be given, and whether plaintiff or defendant] in the sum of [state sum in letters] dollars, to answer judgment in the said action.

We, therefore, hereby authorize you to take such bail on behalf of the said from two sufficient sureties, upon the bailbond hereto annexed, and to swear the said sureties to the truth of the annexed affidavits as to their sufficiency, in the form indorsed hereon.

And we command you, that upon the said bond and affidavits being duly executed and signed by the said sureties, you do transmit the same, attested by you, to the registry of our said court.

Given at in our said court, under the seal thereof, this day of 18 .

(Signed) E. F.,

Registrar or District Registrar.

Commission to take bail.

Taken out by .

Form of Oath to be administered to each Surety.

You swear that the contents of the affidavit, to which you have subscribed your name, are true.

So help you God.

No. 19.

[Rule 47.]

AFFIDAVIT OF JUSTIFICATION.

[Title of court and action.]

I [state name, address and description of surety], one of the proposed sureties for [state name, address and description of person for whom bail is to be given], make oath and say that I am worth more than the sum of [state in letters the sum in which bail is to be given] dollars, after the payment of all my debts.

110 *Exchequer Court—Admiralty.*

On the day of
 18 , the said was duly
 sworn to the truth of this affidavit
 at Before me,
 E. F., Registrar.
 or district registrar or Commis-
 sioner [or as the case may be.]

} *Signature of surety.*

Rule 50.]

No. 20.

NOTICE OF BAIL.

[*Title of court and action.*]

Take notice that I tender the under-mentioned persons as bail on behalf of [*state name, address and description of party for whom bail is to be given, and whether plaintiff or defendant*] in the sum of [*state sum in letters and figures*] to answer judgment in this action [*or judgment and costs, or costs only, or as the case may be.*]

Names, addresses, and descriptions of

SURETIES.

REFEREES.

(1)

(2)

Dated this

day of

18

(Signed)

X. Y.

Rule 51.]

No. 21.

NOTICE OF OBJECTION TO BAIL.

[*Title of court and action.*]

Take notice that I object to the bail proposed to be given by [*state name, address, and description of surety or sureties objection to*] in the above-named action.

Dated the

day of

18

(Signed)

A. B.

(L.S.) *Title of court and action.*

To the marshal of the Admiralty District of
(or the sheriff of the County of _____, or as the case
may be) Greeting:

Given at _____, in Our said court, under the seal
thereof, _____ day of _____ 18—.

Taken out by

(Signed) E. F.
Registrar [or District Registrar].

(Rule 64.

(1) *In an Action for damages by collision:*

STATEMENT OF CLAIM.

[Title of court and action.]

Writ issued 18—.

1. Shortly before 7 p.m. on the 31st January, 1878, the brig "*Anthea*," of 234 tons register, of which the plaintiff, George De Garis, was then owner, whilst on a voyage from Cardiff to Granville, in France, laden with coals, and manned with a crew of nine hands, all told, was about fifteen miles S. E. 4 E. from the Lizard Light.

2. The wind at that time was about E. N. E., a moderate breeze, the weather was fine, but slightly hazy, and the

tide was about slack water, and of little force. The "*Anthes*" was sailing under all plain sail, close hauled on the port tack, heading about S. E. and proceeding through the water at the rate of about five knots per hour. Her proper regulation side sailing lights were duly placed and exhibited and burning brightly, and a good look-out was being kept on board of her.

3. At that time those on board the "*Anthes*" observed the red light of a sailing vessel, which proved to be the "*Atlantic*," at the distance of about from one mile and a half to two miles from the "*Anthes*," and bearing about one point on her port bow. The "*Anthes*" was kept close hauled by the wind on the port tack. The "*Atlantic*" exhibited her green light and shut in her red light, and drew a little on to the star-board bow of the "*Anthes*," and she was then seen to be approaching and causing immediate danger of collision. The helm of the "*Anthes*" was thereupon put hard down, but the "*Atlantic*," although loudly hailed from the "*Anthes*," ran against and with her stem and starboard bow struck the starboard quarter of the "*Anthes*" abaft the main rigging, and did her so much damage that the "*Anthes*" soon afterwards sank, and was with her cargo wholly lost, and four of her hands were drowned.

4. There was no proper look-out kept on board the "*Atlantic*."

5. Those on board the "*Atlantic*" improperly neglected to take in due time proper measures for avoiding a collision with the "*Anthes*."

6. The helm of the "*Atlantic*" was ported at an improper time.

7. The said collision, and the damages and losses consequent thereon, were occasioned by the negligent and improper navigation of those on board the "*Atlantic*."

The plaintiff claims—

1. A declaration that he is entitled to the damage proceeded for.
2. The condemnation of the defendants [and their bail] in such damage and in costs.
3. To have an account taken of such damage with the assistance of merchants.
4. Such further or other relief as the nature of the case may require.

Dated the

day of

18—.

(Signed)

A. B., plaintiff.

DEFENCE AND COUNTER-CLAIM.

[Title of court and action.]

1. The defendants are the owners of the Swedish barque "*Atlantic*," of 988 tons register, carrying a crew of nineteen hands all told, and at the time of the circumstances hereinafter stated bound on a voyage to Cardiff.

2. A little before 6.30 p.m., on the 31st of January, 1878, the "*Atlantic*" was about fifteen miles S. E. by S. of the Lizard. The wind was E. N. E. The weather was hazy. The "*Atlantic*," under foresail, fore and main topsails, main topgallant sail, and jib, was heading about W. S. W., making from five to six knots an hour with her regulation lights duly exhibited and burning, and a good look-out being kept on board her.

3. In these circumstances the red lights of two vessels were observed pretty close together, about half mile off, and from two to three points on the starboard bow. The helm of the "*Atlantic*" was put to port in order to pass on the port sides of these vessels. One, however, of the vessels, which was the "*Anthes*," altered her course, and exhibited her green light, and caused danger of collision. The helm of the "*Atlantic*" was then ordered to be steadied, but before this order could be completed was put a hard-a-port. The "*Anthes*" with her starboard side by the main rigging struck the stem of the "*Atlantic*" and shortly afterwards sank, her master and four of her crew being saved by the "*Atlantic*."

4. Save as herein-before admitted, the several statements in the statement of claim are denied.

5. The "*Anthes*" was not kept on her course as required by law.

6. The helm of the "*Anthes*" was improperly starboarded.

7. The collision was caused by one or both of the things stated in the fifth and sixth paragraphs hereof, or otherwise by the negligence of the plaintiffs, or of those on board the "*Anthes*."

8. The collision was not caused or contributed to by the defendants, or by any of those on board the "*Atlantic*."

And by way of counter-claim, the defendants say—

They have suffered great damage by reason of the collision.

And they claim as follows :—

1. Judgment against the plaintiff [and his bail] for the damage occasioned to the defendants by the collision, and for the costs of this action.
2. To have an account taken of such damage with the assistance of merchants.
3. Such further and other relief as the nature of the case may require.

Dated the day of 18 .
(Signed) C.D. &c., defendants.

REPLY.

[*Title of court and action.*]

The plaintiff denies the several statements contained in the statement of defence and counter-claim, [or admits the several statements contained in paragraphs and of the statement of defence and counter-claim, but denies the other statements contained therein.]

Dated day of 18 .
(Signed) A.B., plaintiff.

b. (*The "Julia David."*)

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued 18 .

1. At about 2 a.m. on the 4th day of September, 1876, the steamship "*Sarpedon*," of 1,556 tons register, and 225 horse power, of which the plaintiffs were owners, whilst on a voyage from Shanghai, and other ports to London, with a cargo of tea and other goods, was about eighty miles south-west of Ushant.

2. The wind at such time was about south-west, the weather was a little hazy and occasionally slightly thick, and the "*Sarpedon*" was under steam and sail, steering north-east, and proceeding at the rate of about ten knots per hour. Her proper regulation masthead and side lights

were duly exhibited and burning brightly, and a good look-out was being kept.

3. At such time the masthead and red lights of a steam vessel, which proved to be the above-named vessel "*Julia David*," were seen at the distance of about two miles from and ahead of the "*Sarpedon*," but a little on her port bow. The helm of the "*Sarpedon*" was ported and hard a-ported, but the "*Julia David*" opened her green light to the "*Sarpedon*," and although the engines of the "*Sarpedon*" were immediately stopped, and her steam whistle was blown, the "*Julia David*" with her stem struck the "*Sarpedon*" on her port side, abreast of her red light, and did her so much damage that her master and crew were compelled to abandon her, and she was lost with her cargo. The "*Julia David*" went away without rendering any assistance to those on board the "*Sarpedon*," and without answering signals which were made by them for assistance.

4. Those on board the "*Julia David*" neglected to keep a proper look-out.

5. Those on board the "*Julia David*" neglected to duly port the helm of the "*Julia David*."

6. The helm of the "*Julia David*" was improperly star-boarded.

7. The "*Julia David*," did not duly observe and comply with the provisions of article 16 of the "Regulations for Preventing Collisions at Sea."

8. The said collision was occasioned by the improper and negligent navigation of the "*Julia David*."

The plaintiffs claim—

1. A declaration that they are entitled to the damage proceeded for, and the condemnation of the said steamship "*Julia David*," and the defendants, therein, and in costs.
2. To have an account taken of such damage with the assistance of merchants.
3. Such further and other relief as the nature of the case may require.

Dated the

day of

18

(Signed)

A.B. &c., plaintiffs.

DEFENCE AND COUNTER-CLAIM.

[Title of court and action].

1. The defendants are the owners of the Belgian screw steamship "*Julia David*," of about 1,274 tons register, and worked by engines of 140 horse power nominal, with a crew of 30 hands, which left Havre on the 2nd of September, 1876, with a general cargo, bound to Alicante and other ports in the Mediterranean.

2. About 2.45 a.m. of the 4th of September, 1876, the "*Julia David*" in the course of her said voyage, was in the Bay of Biscay. The weather was thick with a drizzling rain, and banks of fog and a stiff breeze blowing from S.S.W., with a good deal of sea. The "*Julia David*" under steam alone, was steering S.S.W. $\frac{1}{2}$ W. by bridge steering compass, or S.W. $\frac{1}{2}$ W. magnetic, and was making about five knots an hour. Her regulation lights were duly exhibited and burning brightly, and a good look-out was being kept on board her.

3. In the circumstances aforesaid those on board the "*Julia David*" saw the green and masthead lights of a steamship, the "*Sarpedon*," about two miles off, and about two points on the starboard bow. The "*Julia David*" was kept on her course. But after a short time the "*Sarpedon*" opened her red light and caused danger of collision. The helm of the "*Julia David*" was thereupon put hard a-port, and her engines stopped and almost immediately reversed full speed, but, nevertheless, the "*Sarpedon*" came into collision with the "*Julia David*," striking with the port side her stem and port bow, and doing her considerable damage.

4. The vessels separated immediately. The engines of the "*Julia David*" were then stopped, and her pumps sounded. She was making much water, and it was found necessary to turn her head away from the wind and sea. As soon as it could be done without great danger, she was steamed in the direction in which those on board her believed the "*Sarpedon*" to be, but when day broke and no traces of the "*Sarpedon*" could be discovered, the search was given up, and the "*Julia David*," being in a very disabled state, made her way to a port of refuge.

5. Save as hereinbefore appears, the several statements contained in the statement of claim are denied.

6. A good look-out was not kept on board the "*Sarpedon*."

7. The helm of the "*Sarpedon*" was improperly ported.

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8. Those on board the "*Sarpedon*" improperly neglected or omitted to keep her on her course.

9. Those on board the "*Sarpedon*" did not observe the provisions of Article 16 of the "Regulations for Preventing Collisions at Sea."

10. The collision was occasioned by some or all of the matters and things alleged in the 6th, 7th, 8th, and 9th paragraphs hereof, or otherwise by the default of the "*Sarpedon*" or those on board her.

11. No blame in respect of the collision is attributable to the "*Julia David*" or to any of those on board her.

And by way of counter-claim the defendants say that the collision caused great damage to the "*Julia David*."

And they claim—

- (1) The condemnation of the plaintiffs [and their bail] in the damage caused to the "*Julia David*," and in the costs of this action.
- (2) To have an account taken of such damage with the assistance of merchants.
- (3.) Such further and other relief as the nature of the case may require.

Dated the day of 18 .
(Signed) C. D., &c., defendants.

REPLY.

[*Title of court and action*].

The plaintiffs deny the several statements contained in the statement of defence and counter-claim [or, as the case may be].

Dated the day of 18 .
(Signed) A. B., &c., plaintiff.

(2) *In an Action for Salvage:*

a. (*The "Crosby."*)

STATEMENT OF CLAIM.

[*Title of court and action*.]

Writ issued 18 .

1. The "*Asia*" is an iron screw steamship of 902 tons net register tonnage, fitted with engines of 120 horse-power

nominal, is of the value of \$, and was at the time of the service hereinafter stated manned with a crew of twenty-three hands under the command of George Hook Bawn, her master.

2. At about 9 a.m. on the 29th of April, 1877, while the "*Asia*"—which was in ballast proceeding on a voyage to Nikolaev to load a cargo of grain—was between Odessa and Ochakov, those on board her saw a steamship ashore on a bank situated about ten miles to the westward of Ochakov. The "*Asia*" immediately steamed in the direction of the distressed vessel which made signals for assistance.

3. On nearing the distressed vessel, which proved to be the "*Crosby*," one of the "*Asia*'s" boats was sent to the "*Crosby*," in charge of the second mate of the "*Asia*," and subsequently the master of the "*Crosby*" boarded the "*Asia*," and at the request of the master of the "*Crosby*" the master of the "*Asia*" agreed to endeavour to tow the "*Crosby*" afloat.

4. The "*Crosby*" at this time was fast aground, and was lying with her head about N.N.W.

5. The master of the "*Asia*" having ascertained from the master of the "*Crosby*" the direction in which the "*Crosby*" had got upon the bank, the "*Asia*" steamed up on the starboard side of the "*Crosby*" and was lashed to her.

6. The "*Asia*" then set on ahead and attempted to tow the "*Crosby*" afloat, and so continued towing without effect until the hawser which belonged to the "*Asia*" broke.

7. The masters of the two vessels being then both agreed in opinion that it would be necessary to lighten the "*Crosby*" before she could be got afloat, it was arranged that the cargo from the "*Crosby*" should be taken on board the "*Asia*."

8. The "*Asia*" was again secured alongside the "*Crosby*" and the hatches being taken off cargo was then discharged from the "*Crosby*" into the "*Asia*," and this operation was continued until about 6 p.m., by which time about 100 tons of such cargo had been so discharged.

9. When this had been done both vessels used their steam, and the "*Asia*" tried again to get the "*Crosby*" off, but without success. The "*Asia*" then towed with a hawser ahead of the "*Crosby*," and succeeded in getting her afloat, upon which the "*Crosby*" steamed to an anchorage and then brought up.

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2.
court

10. The "*Asia*" steamed after the "*Crosby*" and again hauled alongside of her and commenced putting the transhipped cargo again on board the "*Crosby*," and continued doing so until about 6 a.m. of the 30th of April, by which time the operation was completed, and the "*Crosby*" and her cargo being in safety the "*Asia*" proceeded on her voyage.

11. By the services of the plaintiffs the "*Crosby*" and her cargo were rescued from a very dangerous and critical position, as in the event of bad weather coming on whilst she lay aground she would have been in very great danger of being lost with her cargo.

12. The "*Asia*" encountered some risk in being lashed alongside the "*Crosby*" and she ran risk of also getting aground and of losing her charter, the blockade of the port of Nikolaev being at the time imminent.

13. The value of the hawser of the "*Asia*" broken as herein stated was \$.

14. The "*Crosby*" is an iron screw steamship of 1,118 tons net, (1,498 gross) register tonnage. As salvaged, the "*Crosby*" and her cargo and freight have been agreed for the purposes of this action at the value of \$.

The plaintiffs claim—

1. Such an amount of salvage, regard being had to the said agreement, as the court may think fit to award.
2. The condemnation of the defendants [and their bail] in the salvage and in costs.
3. Such further and other relief as the case may require.

Dated the day of , 18 .

(Signed) A. B., &c., plaintiffs.

DEFENCE.

[Title of court and action].

1. The defendants admit that the statement of facts contained in the statement of claim is substantially correct, except that the reshipment of the cargo on board the "*Crosby*" was completed by 4 a.m. on the 30th April.

2. The defendants submit to the judgment of the court to award such a moderate amount of salvage to the

plaintiffs under the circumstances aforesaid as to the said court shall seem meet.

(Signed) C. D., &c., defendants.

REPLY.

[*Title of court and action.*]

The plaintiffs deny the statement contained in the 1st paragraph of the statement of defence that the shipment of the cargo was completed by 4 a.m. on the 30th April.

Dated the day of , 18 .

(Signed) A. B. &c., plaintiffs.

b. (*"The Newcastle."*)

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued 18 .

1. The "*Emu*" is a steam tug belonging to the Whitby Steam Boat Company, of six tons register, with engines of 40 horse-power, nominal, and was at the time of the circumstances hereinafter stated manned by a crew of five hands.

2. Just before midnight on the 22nd of July, 1876, when the "*Emu*" was lying in Whitby harbour, her master was informed that a screw steamship was ashore on Kettleness Point. He at once got up steam, but was not able, owing to the tide, to leave the harbour till about 1.45 a.m. of the 23rd.

3. About 2 a.m. the "*Emu*" reached the screw steamship, which was the "*Newcastle*" which was fast upon the rocks, with a kedge and warp out. The wind was about N., blowing fresh; the sea was smooth, but rising; the tide was flood.

4. The master of the "*Emu*" offered his services, which were at first declined by the master of the "*Newcastle*"; shortly afterwards the kedge warp broke and the "*Newcastle*" swung square upon the land and more upon the rocks. The master of the "*Newcastle*" then asked the master of the "*Emu*" to tow him off, and after some

conversation it was agreed that the remuneration should be settled on shore.

5. About 3 a.m. those on board the "*Emu*" got a rope from the "*Newcastle*" on board, and began to tow. After some towing this rope broke. The tow-line of the "*Newcastle*" was then got on board the "*Emu*," and the "*Emu*" kept to wind and twisting the "*Newcastle*," but was unable to get her off till about 5 a.m., when it was near high water. The master of the "*Emu*" then saw that it was necessary to try a click or jerk in order to get the "*Newcastle*" off, and accordingly, at the risk of straining his vessel, he gave a strong click in a northerly direction, and got the "*Newcastle*" off.

6. The master of the "*Emu*" then asked if the "*Newcastle*" was making water, and was told a little only, but as he saw that the hands were at the pumps he kept the "*Emu*" by the "*Newcastle*" until she was abreast of Whitby. He then inquired again if any assistance was wanted, and being told that the "*Newcastle*" was all right, and should proceed on her voyage, he steamed the "*Emu*" back into Whitby harbour about 7 a.m.

7. About 8 a.m. a gale from N.E. which continued all that day and the next, came on to blow with a high sea. If the "*Newcastle*" had not been got off before the gale came on she would have gone to pieces on the rocks.

8. By the services aforesaid the "*Newcastle*" and her cargo and the lives of those on board her were saved from total loss.

9. The "*Newcastle*" is a screw steamship of 211 tons register, and was bound from Newcastle to Hull with a general cargo and 19 passengers. The value of the "*Newcastle*" her cargo and freight, including passage money, are as follows:

The "*Newcastle*," \$, her cargo, \$; freight and passage money, \$; in all, \$.

Plaintiffs claim—

- (1.) The condemnation of the defendants (and their bail) in such an amount of salvage remuneration as to the court may seem just, and in the costs of this action.
- (2.) Such further and other relief as the nature of the case may require.

Dated day of 18 .
(Signed) A.B., &c., plaintiffs.

DEFENCE.

[Title of court and action.]

1. At about 6.45 p.m. on the 22nd of July, 1876, the iron screw steamship "*Newcastle*," of 211 tons register, propelled by engines of 45 horse-power, and manned by 12 hands, her master included, whilst proceeding on a voyage from Newcastle to Hull with cargo and passengers, ran aground off Kettleness Point, on the coast of Yorkshire.

2. The tide at this time was the first quarter ebb, the weather was calm, and the sea was smooth, and the "*Newcastle*," after grounding as aforesaid, sat upright and lay quite still, heading about E. S. E. Efforts were then made to get the "*Newcastle*" again afloat by working her engines, but it was found that this could not be done in the then state of the tide.

3. At about 10 p.m. of the said day a kedge, with a warp attached to it, was carried out from the "*Newcastle*" by one of her own boats and dropped to seaward, and such warp was afterwards hove taut and secured on board the "*Newcastle*" with the view of its being hove upon when the flood tide made. Several cobbles came to the "*Newcastle*" from Runswick, and the men in them offered their assistance, but their services, not being required, were declined.

4. At about 2 a.m. of the following morning the steam tug "*Emu*," whose owners, master, and crew are the plaintiffs in this action, came to the "*Newcastle*" and offered assistance, which was also declined.

5. The flood tide was then making, and by about 2.45 a.m. the "*Newcastle*" had floated forward, and attempts were made to get the stern of the "*Newcastle*" also afloat, and the warp attached to the aforesaid kedge was attempted to be hove in, but the said warp having parted, the master of the "*Newcastle*" endeavoured ineffectually to make an agreement with the master of "*Emu*" to assist in getting the "*Newcastle*" afloat, and at about 3 a.m. a rope was given to the "*Emu*" from the port bow of the "*Newcastle*," and directions were given to the "*Emu*" to keep the head of the "*Newcastle*" to the eastward in the same way as it had been kept by the aforesaid kedge anchor and warp. The "*Emu*" then set ahead and almost immediately the said rope was broken. A coir hawser was thereupon given to the "*Emu*," and those on board her were directed not to put any strain on it, but to keep the "*Emu*" paddling ahead sufficiently to steady the head of the "*Newcastle*," and to keep her head to the east-

ward. This the "Emu" did and continued to do until about 4.40 a. m., when the "Newcastle," by means of her own engines, was moved off from the ground, and the "Emu" was brought broad on the port bow of the "Newcastle," and the "Emu" had to stop towing and to shift the rope from her port bollard, where it was fast to her towing hook; but the "Newcastle" continuing to go ahead, the said rope had to be let go on board the "Emu," and it was then hauled in on board the "Newcastle." The "Newcastle" under her own steam, then commenced proceeding south, the wind at the time being N. N. W. and light, and the weather fine. It was afterwards ascertained that the "Newcastle" was making a little water in her afterhold, and her hand pumps were then worked, and they kept the "Newcastle" free.

6. The "Emu" proceeded back with the "Newcastle" as far as Whitby, and the "Newcastle" then continued on her voyage and arrived in the Humber at about 2.45 p. m. of the same day.

7. During the time aforesaid the master, crew, and passengers of the "Newcastle" remained on board the "Newcastle," and no danger was incurred in their so doing.

8. Save as herein appears the defendants deny the truth of the several statements contained in the statement of claim.

9. The defendants have paid into court and tendered to the plaintiffs for their services the sum of \$, and have offered to pay their costs, and the defendants submit that such tender is sufficient.

Dated the day of 18 .
(Signed) C. D. &c., defendants.

(3) *In an action for distribution of salvage:*

STATEMENT OF CLAIM.

[Title of court and action].

Writ issued 18

1. Describe briefly the salvage services, stating the part taken in them by the plaintiffs, and the capacity in which they were serving.

2. The sum of \$ has been paid by the owners of the ship, &c. [state name of ship or other property salvaged] to

the defendants, as owners of the ship [state name of salvaging ship], and has been accepted by them in satisfaction of their claim for salvage, but the said defendants have not paid and refused to pay any part of that sum to the plaintiffs for their share in the said salvage services.

The plaintiffs claim—

1. An equitable share of the said sum of \$, to be apportioned among them as the court shall think fit and the costs of this action.
2. Such other relief as the nature of the case may require.

Dated the day of 18 .
(Signed) A. B., &c., plaintiffs.

(4) *In an action for master's wages and disbursements :
a ("The Princess.")*

STATEMENT OF CLAIM.

[Title of court and action].

Writ issued 18 .

1. The plaintiff, on the 10th day of February, 1877, was appointed by the owner of the British barque "*Princess*," proceeded against in this action, master of the said barque, and it was agreed between the plaintiff and the said owner that the wages of the plaintiff as master should be \$ per month.

2. The plaintiff acted as master of the said barque from the said 10th day of February until the 25th day of October, 1877, and there is now due to him for his wages as master during that time the sum of \$.

3. The plaintiff as master of the said barque expended various sums of money for necessary disbursements on account of the said barque; and there is now due to him in respect of the same a balance of \$.

The plaintiff claims—

1. A decree pronouncing the said sums, amounting in the whole to \$, to be due to him for wages and disbursements, and directing the said vessel to be sold and the amount due to him to be paid to him out of the proceeds.

Dated the day of 18 .
(Signed) A. B., plaintiff.

Writ issued 18

4. The "*Northumbria*," after so leaving Cardiff, met with bad weather and suffered damage, and was compelled to put back to Falmouth for repairs before again proceeding on her voyage.

5. The plaintiff was ready and willing to continue in the service of the "*Northumbria*," and to perform his duty as her master on and during the said voyage, but the defendants, the owners of the "*Northumbria*," wrongfully and without reasonable cause discharged the plaintiff on the 23rd day of November from his employment as master, and appointed another person as master of the "*Northumbria*" on the said voyage in the place of the plaintiff, and thereby heavy damage and loss have been sustained by the plaintiff.

6. The plaintiff, whilst he acted as master of the "*Northumbria*," earned his wages at the rate aforesaid; and he also, as such master, made divers disbursements on account of the "*Northumbria*"; and there was due and owing to the plaintiff in respect of such his wages and disbursements, at the time of his discharge, a balance of \$

, which sum the defendants without sufficient cause have neglected and refused to pay to the plaintiff.

The plaintiff claims—

1. Payment of the sum of \$, the balance due to the plaintiff for his wages and disbursements with interest thereon.
2. Ten days double pay, according to the provisions of section 187 of "The Merchant Shipping Act, 1854."
3. Damages in respect of his wrongful discharge by the defendants.
4. The condemnation of the defendants and their bail, in the amounts claimed by or found due to the plaintiff.
5. To have an account taken [with the assistance of merchants] of the amount due to the plaintiff in respect of the said wages and disbursements, and for damages in respect of such wrongful discharge.
6. Such further and other relief as the nature of the case may require.

Dated the day of 18 .

(Signed) A. B., plaintiff.

DEFENCE.

[Title of court and action].

1. The defendants admit the statements made in the 1st, 2nd, 3rd and 4th paragraphs of the plaintiff's statement of claim.

2. Whilst the "*Northumbria*" was upon her voyage in the said 3rd paragraph mentioned, and before and until she put into Falmouth, as in the said 4th paragraph mentioned, the plaintiff was frequently under the influence of drink.

3. During the night of the 10th November, 1875, and the morning of the 11th November, 1875, whilst a violent gale was blowing, and the ship was in danger, the plaintiff was wholly drunk and was incapable of attending to his duty as master of the said ship; and in consequence of the condition of the plaintiff much damage was done to the said ship, and the said ship was almost put ashore.

4. The damage in the 4th paragraph of the statement of claim mentioned was wholly or in part occasioned by the drunken condition of the plaintiff during the said voyage from Cardiff to Falmouth.

5. The defendants having received information of the above facts on the arrival of the said ship at Falmouth, and having made due inquiries concerning the same, had reasonable and probable cause to and did discharge the plaintiff from their employment as master of the said ship on the 23rd November, 1875.

6. The plaintiff, on the 12th day of November, 1875, whilst the said ship was at Falmouth, wrongfully and improperly tore out and destroyed certain entries which had been made by the mate of the said ship in her log-book relating to said sea voyage from Cardiff to Falmouth; and the plaintiff substituted in the said log-book entries made by himself with intent to conceal the true facts of said voyage from the defendants.

7. The defendants bring into court the sum of \$ in respect of the plaintiff's claim for wages and disbursements, and say that the said sum is enough to satisfy the plaintiff's said claim in that behalf. The defendants offered to pay the plaintiff's costs to this time in respect of those two causes of action.

Dated the day of 18 .

(Signed) C. D., E. F., etc., defendants.

REPLY.

[*Title of court and action.*]

The plaintiff denies the several statements contained in the statement of defence [or as the case may be].

[illegible]

(5) *In an action for seamen's wages:*

STATEMENT OF CLAIM.

[*Title of court and action*].

Writ issued 18

1. The plaintiff, A. B., was engaged as mate of the British brig "*Bristol*," at the rate of \$ per month, and in pursuance of that engagement served as mate on board the said brig from the day of 18 , to the day of 18 , and during that time as mate of the said brig earned wages amounting to \$. After giving credit for the sum received by him on account, as shown in the schedule hereto, there remains due to him for his wages a balance of \$.

2. The plaintiffs C. D., E. F. and G. H. were engaged as able seamen on board the said brig, and having in pursuance of that engagement served as able seamen on board the said brig during the periods specified in the schedule hereto, earned thereby as wages the sums set forth in the same schedule, and after giving credit for the sums received by them respectively, on account of the said wages, there remain due to them the following sums, namely :

| | | |
|---------------------|----|----|
| To C. D. the sum of | \$ | . |
| To E. F. | " | \$ |
| To G. H. | " | \$ |

8. The plaintiffs I. K. and L. M. were engaged as ordinary seamen on board the said brig, and having served on board the same in pursuance of the said engagement during the periods specified in the schedule hereto, earned thereby the sums set forth in the same schedule, and after giving credit for the sums received by them respectively, on account of the said wages, there remain due to them the following sums, namely:—

To I. K. the sum of \$
To L. M. " \$

1.
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F.A.

SCHEDULE REFERRED TO ABOVE.

Wages due to A. B., mate, from the 18 , to
the 18 , months and days at
\$ per month.

Less received on account \$: :
\$: :

Balance due \$: :

Wages due to C. D., able seaman, from the
18 , to the 18 , months and
days, at \$ per month.

Less received on account \$: :
\$: :

Balance due \$: :

[So on with the wages due to the other plaintiffs].

The plaintiffs claim:

1. The several sums so due to them respectively with the costs of this action.
2. Such double pay as they may be entitled to under sec. 187, of The Merchant Shipping Act, 1854.
3. Such other relief as the nature of the case may require.

Dated the day of 18 .
(Signed) A. B., etc., plaintiffs.

(6) In an action for bottomry:

STATEMENT OF CLAIM.

[Title of court and action].

Writ issued 18 .

1. In the month of July, 1876, the Italian barque "*Roma Capitale*" was lying in the port of Rangoon in the Pegu Division of British Burmah, and Pietro Ozilia, her master, being in want of funds, was compelled to borrow on bottomry of the said barque and her freight from the Cassa Marittima di Genova the sum of \$ for the necessary

and indispensable repairs, charges and supplies of the said vessel in the said port of Rangoon, and to enable her to prosecute her voyage from Rangoon to Akyab and thence to

2. Accordingly, by a bond of bottomry dated the 11th day of the said month of July and duly executed by him the said Pietro Ozilia, in consideration of the sum of \$, lent by the said Cassa Marittima di Genova upon the said adventure upon the said barque and freight at the maritime premium of 23 per cent, bound himself and the said barque and the freight to become payable in respect of the said voyage to pay to the said Cassa Marittima di Genova, their successors or assigns, the sum of \$, (which included the principle charges and the maritime interest due thereon), within 30 days after the said barque should arrive at her port of discharge; and the said bond provided that the said Cassa Marittima di Genova should take upon themselves the maritime risk of the said voyage.

3. The "*Roma Capitale*" has since successfully prosecuted her said intended voyage for which the aforesaid bond was granted, and arrived at as her port of discharge or on about the 30th day of March, 1877.

4. Before the issue of the writ in this action the said bond became due and payable, and was duly endorsed by the said Cassa Marittima di Genova to the plaintiffs who thereby became and are the legal holders thereof, and the said sum of \$, is now due and owing thereon to the plaintiffs.

The plaintiffs claim—

1. A declaration for the force and validity of the said bond.
2. The condemnation of the said barque "*Roma Capitale*" and her freight in the sum of \$. with interest thereon at per cent per annum from the time when the said bond became payable, and in costs.
3. A sale of the said barque and the application of the proceeds of her sale and of her freight in payment to the plaintiffs of the said amount and interest and costs.
4. Such further and other relief as the case may require.

Dated the day of 18 .
(Signed) A. B., &c., plaintiffs.

(7) *In an Action for mortgage :*

STATEMENT OF CLAIM.

[Title of court and action].

Writ issued 18 .

1. The above-named brigantine or vessel "*Juniper*" is a British ship belonging to the port of , of the registered tonnage of 109 tons or thereabouts, and at the time of the mortgage hereinafter mentioned, Thomas Brock, of , was the registered owner of the said brigantine.

2. On the 4th day of July, 1876, 31th parts or shares of the said brigantine were mortgaged by the said Thomas Brock to the plaintiff, to secure the payment by the said Thomas Brock to the plaintiff of the sum of \$, together with interest thereon at the rate of per cent per annum on or before the 1st day of July, 1877.

3. The said mortgage of the "*Juniper*" was made by an instrument dated the 4th day of July, 1876, in the form prescribed by the 66th section of *The Merchant Shipping Act, 1854*, and was duly registered in accordance with the provisions of the said Act.

4. No part of the said principal sum or interest has been paid, and there still remains due and owing to the plaintiff on the said mortgage security the principal sum of \$, together with a large sum of money for interest and expenses, and the plaintiff, although he has applied to the said Thomas Brock for payment thereof, cannot obtain payment without the assistance of this court.

The plaintiff claims—

1. Judgment for the said principle sum of \$, together with interest and expenses.
2. To have an account taken of the amount due to the plaintiff.
3. Payment out of the proceeds of the said brigantine now remaining in court, of the amount found due to the plaintiff, together with costs [or to have the said brigantine sold, &c., as the case may be].
4. Such further and other relief as the nature of the case may require.

Dated day of 18 .

(Signed) A. B., plaintiff.

(8) *In an Action between co-owners (for account):*

STATEMENT OF CLAIM.

[*Title of Court and action*].

Writ issued

18 .

1. The *Horlock* is a sailing ship of about 40 tons register, trading between and .

2. By a bill of sale duly registered on the 11th day of June, 1867, the defendant, John Horlock, who was then sole owner of the above named ship "*Horlock*," transferred to Thomas Worraker, of $\frac{3}{4}$ th parts of shares of the ship for the sum of \$.

3. By a subsequent bill of sale duly registered on the 16th December, 1876, the said Thomas Worraker transferred his said $\frac{3}{4}$ th shares of the ship to George Wright, the plaintiff, for the sum of \$.

4. The defendant, John Horlock, has had the entire management and the command of the said ship from the 11th day of June, 1867, down to the present time.

5. The defendant has from time to time up to and including the 24th September, 1874, rendered accounts of the earnings of the ship to the aforementioned Thomas Worraker, but since the said 24th of September, 1874, the defendant has rendered no accounts of the earnings of the ship.

6. Since the 16th December, 1876, the ship has continued to trade between and , and the plaintiff has made several applications to the defendant, John Horlock, for an account of the earnings of the ship, but such applications have proved ineffectual.

7. The plaintiff is dissatisfied with the management of the ship, and consequently desires that she may be sold.

The plaintiff claims —

1. That the court may direct the sale of the said ship "*Horlock*."

2. To have an account taken of the earnings of the said ship, and that the defendant may be condemned in the amount which shall be found due to the plaintiff in respect thereof, and in the costs of this action.

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ment of de
Dated

Dated the day of 18 .
(Signed) A. B., plaintiff.

[Title of court and action].

2. The defendant further says that he never at any time signed any bill of sale transferring any shares whatever of the said ship "*Horlock*" to the said Thomas Worraker, and further says that if any such bill was registered as alleged on the 11th June in the said 2nd paragraph (which the defendant denies) the same was made and registered fraudulently and without the knowledge, consent or authority of the defendant.

4. The defendant denies the statements contained in paragraph 5 of the statement of claim, and says that he never rendered any such accounts as alleged therein.

Dated the day of 18 .
(Signed) C. D., defendant.

[Title of court and action].

Dated the day of 18 .
(Signed) A. B., plaintiff.

(9) *In an Action for possession:*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued

18 .

1. The plaintiffs are registered owners of $\frac{3}{4}$ shares in the British ship "*Native Pearl*," and such shares are held by them respectively as follows:—

Morgan Parsall Griffiths is owner of $\frac{1}{4}$ shares, Edmund Nicholls of $\frac{1}{4}$ shares, William Meagher of $\frac{1}{4}$ shares, Isaac Butler of $\frac{1}{4}$ shares, and William Herbert of $\frac{1}{4}$ shares.

2. The only owner of the said ship other than the plaintiffs is John Nicholas Richardson, who is the registered owner of the remaining $\frac{1}{4}$ shares of the said ship, and has hitherto acted as managing owner and ship's husband of the said ship, and has possession of and control over the said ship and her certificate of registry.

3. The defendant, the said John Nicholas Richardson, has not managed the said ship to the satisfaction of the plaintiffs, and has by his management of her occasioned great loss to the plaintiffs; and the plaintiffs in consequence thereof before the commencement of this action gave notice to the defendant to cease acting as managing owner and ship's husband of the said ship, and revoked his authority in that behalf, and demanded from the defendant the possession and control of the said ship, and of her certificate of registry, but the defendant has refused and still refuses to give possession of the said ship and certificate to the plaintiffs, and the plaintiffs cannot obtain possession of them without the assistance of this court.

4. The defendant has neglected and refused to render proper accounts relating to the management and earnings of the said ship, and such accounts are still outstanding, and unsettled between the plaintiffs and the defendant.

The plaintiffs claim—

1. Judgment giving possession to the plaintiffs of the said ship and of her certificate of registry.
2. To have an account taken, with the assistance of merchants, of the earnings of the ship.
3. A sale of the defendant's shares in the said ship.

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4. Payment out of the proceeds of such sale of the balance (if any) found due to the plaintiffs and of the costs of this action.
5. Such further and other relief as the nature of the case may require.

Dated the day of 18 .
(Signed) A. B., &c., plaintiffs.

(10) *In an Action for necessities :*

STATEMENT OF CLAIM.

[Title of court and action].

Writ issued 18

1. The plaintiffs at the time of the occurrences herein-after mentioned carried on business at the port of _____, as bonded store and provision merchants and ship chandlers

2. The "*Sfactoria*" is a Greek ship, and in the months of June, July, August and September, 1874, was lying in the said port of _____, under the command of one George Lazzaro, a foreigner, her master and owner, and in the said month of September she proceeded on her voyage to _____.

3. The plaintiffs, at the request and by the direction of the said master, supplied during the said months of June, July, August and September, 1874, stores and other necessities for the necessary use of the said ship upon the said then intended voyage to the value of \$ _____, for which sum an acceptance was given by the said George Lazzaro to the plaintiffs; but on the 4th day of February, 1875, the said acceptance, which then became due, was dishonoured, and the said sum of \$ _____ with interest thereon from the said 4th day of February, 1875, still remains due and unpaid to the plaintiffs.

4. In the month of August aforesaid the plaintiffs, at the request of the said master, advanced to him the sum of \$ _____ for the necessary disbursements of the said ship at the said port of _____, and otherwise on account of the said ship; and also at his request paid the sum of \$ _____, which was due for goods supplied for the necessary use of the said ship on the said voyage; and of the sums so advanced and paid there still remains due and

unpaid to the plaintiffs the sum of \$, with interest thereon from the 5th day of January, 1875, on which last mentioned day a promissory note given by the said George Lazzaro to the said plaintiffs for the said sum of \$, was returned to them dishonoured.

5. The plaintiffs also at the said master's request, between the 1st of September, 1874, and the commencement of this action paid various sums amounting to \$, for the insurance of their said debt.

6. The said goods were supplied and the said sums advanced and paid by the plaintiffs upon the credit of the said ship, and not merely on the personal credit of the said master.

The plaintiffs claim—

1. Judgment for the said sums of \$, and \$, together with interest thereon.

2. That the defendant [and his bail] be condemned therein, and in costs.

or

2. A sale of the said ship, and payment of the said sums and interest out of the proceeds of such sale, together with costs.

3. Such further and other relief as the case may require.

Dated the day of 18 .

(Signed) A. B., &c., plaintiffs.

(11) *In an Action for condemnation of a ship or cargo, &c.:*

STATEMENT OF CLAIM.

[Title of court and action].

Writ issued 18 .

State briefly the circumstances of the seizure, or, if on affidavit of the circumstances has been filed, refer to the affidavit

A. B. [state name of person suing in the name of the Crown] claims—

The condemnation of the said ship [and her cargo, and of the said slaves, or as the case may

be], on the ground that the said ship, &c., was at the time of the seizure thereof fitted out for or engaged in the Slave Trade [*or as having been captured from pirates, or for violation of the Act*]
S. *or as the case may be*].

Dated the day of 18 .
(Signed) A. B.

(12) *In an Action for Restitution of a Ship or Cargo:*

STATEMENT OF CLAIM.

[*Title of court and action*].

Writ issued 18 .

State briefly the circumstances of the seizure.

C. D. [*State name of person claiming restitution*] claims—

The restitution of the said vessel , [and her cargo, *or as the case may be*] together with costs and damages for the seizure thereof [*or as the case may be*].

Dated the day of 18 .
(Signed) C. D. &c., plaintiffs.

(13) *In a Piracy case, where the captors intend to apply for Bounty, add:*

A. B. further prays the Court to declare—

- (1) That the persons attacked or engaged were pirates.
- (2) That the total number of pirates so engaged or attacked was of whom were captured.
- (3) That the vessel [*or vessels and boats*] engaged was [*or were*] [] and [].

Dated the day of 18 .
(Signed) A. B.

STATEMENT OF CLAIM.

[*Title of court and action*].

Writ issued 18

Dated the day of 18 ,
 (Signed) A.B.

No. 24.

INTERROGATORIES.

[*Title of court and action*].

1. Did not, &c.
2. Have not, &c.

The defendant E.F. is required to answer the interrogatories numbered _____.

Dated the day of 18 .
(Signed) A.B. [or C D. as the case may be.]

ANSWERS TO INTERROGATORIES.

No. 25.

[Title of court and action].

The answers of the defendant C.D. [or plaintiff A.B. &c.] to the interrogatories filed for his examination by the plaintiff A.B. [or defendant C.D. &c.] .

In answer to the said interrogatories I, the above-named C.D. [or A.B., &c.], make oath and say as follows:—

1. .
2. .
- &c. &c. &c.

On the day of
18 , the said C.D. [or A.B.,
&c., was duly sworn to the truth of this affidavit at
Before me,
E.F., &c. (Signed) C.D. [or A.B.]

No. 26.

[Rule 71.]

AFFIDAVIT OF DISCOVERY.

[Title of court and action].

I, the defendant C.D. [or plaintiff A.B. &c.], make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this action, set forth in the first and second parts of the first schedule hereto.

2. I object to produce the documents set forth in the second part of the said first schedule on the ground that [state grounds of objection, and verify the facts as far as may be].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action as set forth in the second schedule hereto.

4. The last mentioned documents were last in my possession or power on [state when].

5 [Here state what has become of the last mentioned documents, and in whose possession they now are].

6. According to the best of my knowledge, information, and belief, I have not now and never had in my possession, custody, or power, or in the possession, custody or power of my solicitor or agent, or of any other person or persons on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been

made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

SCHEDULE No. I.

Part 1.

[Here set out documents].

Part 2.

[Set out documents].

SCHEDULE No. II.

[Set out documents].

On the day of
18 , said C.D. [or A.D. &c.]
was duly sworn to the truth
of this affidavit at (Signed) C.D. [or A.B.]
Before me,
E.F., &c.

Rule 72].

No. 27.

NOTICE TO PRODUCE.

[Title of court and action].

Take notice that the plaintiff A. B. [or defendant C.D.]
requires you to produce for his inspection, on or before the
day of , the following documents.

[Here describe the documents required to be produced.]

Dated day of 18 .

(Signed) A. B., plaintiff,
[or C. D., defendant.]

To C. D., defendant,
[or as the case may be.]

Rule 74].

No. 28.

NOTICE TO ADMIT DOCUMENTS.

[Title of court and action].

Take notice that the plaintiff, A. B. [or defendant C.D.]
in this action proposes to adduce in evidence the several

documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his solicitor or agent, at _____ on _____, between the hours of _____ and _____; and the defendant [or plaintiff] is hereby required, within *forty-eight hours* from the last mentioned hour, to admit that such of the said documents as are specified as originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this action.

| Description of Documents. | Dates. | Time and mode of service or delivery, &c. |
|---|---|--|
| [Here briefly describe documents]. (1) Originals. (2) Copies. | [Here state the date of each document]. | [Here state whether the original or a duplicate was sent by post, or served or delivered, and when and by whom]. |

Dated the _____ day of _____ 18 ____.

(Signed) A. B., plaintiff [or C. D., defendant].

To C. D., defendant,
[or as the case may be].

No. 29.

(Rule 74)

NOTICE TO ADMIT FACTS.

[Title of court and action].

Take notice that the plaintiff A. B. [or defendant C. D.] demands admission of the under mentioned facts, saving all just exceptions.

1. } [Here state briefly the facts of which admission is
2. } demanded].

Dated the _____ day of _____ 18 ____.

(Signed) A. B., plaintiff [or C. D., defendant].

To C. D., defendant,
[or as the case may be].

Rule 81].

No. 30.

NOTICE OF MOTION.

(Title of court and action).

Take notice that on *(state day of week)* the day
of , the plaintiff *(or defendant)* will (by
counsel, or by his solicitor, *if the motion is to be made by*
counsel or solicitor) move the judge in court *(or in chambers,*
as the case may be) to order that *(state nature of order to be*
moved for. In a notice of motion to vary a report of the
registrar, the items objected to must be specified).

Dated the day of 18 .

(Signed) A. B., plaintiff *(or C. D., defendant).*

Rule 86].

No. 31.

NOTICE OF TENDER.

(Title of court and action).

Take notice that I have paid into court, and tender in
satisfaction of the plaintiff's claim *(or, as the case may be*
if the tender is for costs also, add including costs,) the sum
of *(state sum tendered both in letters and figures, and on*
what terms, if any, the tender is made).

Dated the day of 18 .

(Signed) C. D., defendant.

Rule 86].

No. 32.

NOTICE ACCEPTING OR REJECTING TENDER.

[Title of court and action].

Take notice that I accept *[or reject]* the tender made by
the defendant in this action.

Dated the day of 18 .

(Signed) A. B., plaintiff.

No. 33.

[Rule 92.]

INTERPRETER'S OATH.

You swear that you are well acquainted with the English and languages [or as the case may be] and that you will faithfully interpret between the court and the witnesses.

So help you God.

No. 34.

[Rule 93.]

APPOINTMENT TO ADMINISTER OATHS.

(1) *In Admiralty proceedings generally:*

(L.S.) [Title of court].

To [State name and address of Commissioner].

I hereby appoint you to be a Commissioner to administer oaths in all Admiralty proceedings in this court.

(Signed) A. B.,
Judge or Local Judge in Admiralty.

(2) *In any particular proceeding:*

(L.S.) [Title of court and action].

To [State name and address of appointee].

I hereby authorize you to administer an oath [or oaths as the case may be] to [state name of person or persons to whom, and proceeding in which the oath is to be administered, or as the case may be].

(Signed) A. B.,
Judge, or Local Judge in Admiralty.

No. 35.

[Rule 94.]

FORM OF OATH TO BE ADMINISTERED TO A WITNESS.

You swear that the evidence given by you shall be the truth, the whole truth, and nothing but the truth.

So help you God.

FORM OF DECLARATION IN LIEU OF OATH.

I solemnly promise and declare that the evidence given by me shall be the truth, the whole truth, and nothing but the truth.

Rule 94].

No. 36.

FORM OF OATH TO BE ADMINISTERED TO A DEPONENT.

You swear that this is your name and handwriting, and that the contents of this affidavit are true.

So help you God.

FORM OF DECLARATION IN LIEU OF OATH TO BE MADE BY A DEPONENT.

I solemnly declare that this is my name and handwriting, and that the contents of this deposition are true.

Rule 99].

No. 37.

FORM OF JURAT.

[Where Deponent is sworn by Interpretation].

On the day of
18 , the said A. B. was duly
sworn to the truth of this affi-
davit by the interpretation of
C. D., who was previously
sworn, that he was well ac-
quainted with the English
and languages, (or as
the case may be), and that he
would faithfully interpret the
said affidavit, at
Before me,
E. F., etc.

(Signed) A. B.

No. 98.

[Rule 102.]

ORDER FOR EXAMINATION OF WITNESSES.

[Title of court and action].

On the day of 18 .

Before Judge, etc.

It is ordered that (state the names of the witnesses so far as it can be done), witnesses for the plaintiff (or defendant), shall be examined before the judge (or registrar), at (state place of examination), on (state day of week), the day of instant (or as the case may be), at o'clock in the noon.

(Signed) E. F.,
Registrar or District Registrar.

No. 99.

[Rule 104.]

COMMISSION TO EXAMINE WITNESSES.

(L.S.)

[Title of court and action].

VICTORIA, &c.

To [state name and address of commissioner.] Greeting :

Whereas the Judge of our Exchequer Court of Canada, (or the Local Judge in Admiralty of the Exchequer Court for the Admiralty District of) has decreed that a commission shall be issued for the examination of witnesses in the above named action. We, therefore, hereby authorize you, upon the day of 18 , at , in the presence of the parties, their counsel, and solicitors, or, in the absence of any of them, to swear the witnesses who shall be produced before you for examination in the said action, and cause them to be examined, and their evidence to be reduced into writing. We further authorize you to adjourn, if necessary, the said examination from time to time, and from place to place, as you may find expedient. And we command you, upon the examination being completed, to transmit the evidence duly certified, together with this commission, to the registry of our said court at .

Given at , in our said court, under the seal thereof, this day of 18 .

(Signed) E. F.,
Registrar, or District Registrar.

Commission to examine witnesses.

Taken out by

H.A.A.—10

RETURN TO COMMISSION TO EXAMINE WITNESSES.

[*Title of court and action*].

I, A. B., the commissioner named in the commission hereto annexed, bearing date the day of 18 , hereby certify as follows:—

(1) On the day of 18 , I opened the said commission at , and in the presence of [*state who were present, whether both parties, their counsel, or solicitors, or as the case may be,*] administered an oath to and caused to be examined the under named witnesses who were produced before me on behalf of the [*state whether plaintiff or defendant*] to give evidence in the above named action, viz.:—

[*Here state name of witnesses.*]

(2) On the day of 18 , I proceeded with the examinations at the same place [*or, at some other place, as the case may be,*] and in the presence of [*state who were present, as above*], administered an oath to and caused to be examined the under-named witnesses who were produced before me on behalf of [*state whether plaintiff or defendant*] to give evidence in the said action, viz.:

[*State names of witnesses*].

(3) Annexed hereto is the evidence of all the said witnesses certified by me to be correct.

Dated the day of 18 .

(Signed) G. H.,
Commissioner.

SHORTHAND WRITER'S OATH.

You swear that you will faithfully report the evidence of the witnesses to be produced in this action.

So help you God.

No. 42.

Rule 114.

NOTICE OF TRIAL.

[Title of court and action].

Take notice that I set down this action for trial.

Dated the day of 18 .

(Signed) A. B., plaintiff,
 [or C. D. defendant].

No. 48.

[Rule 127]

REGISTRAR'S REPORT.

(L.S.)

[Title of court and action].

To the Honourable the Judge of the Exchequer Court
of Canada [or to the Honourable the Local Judge
in Admiralty of the Exchequer Court for the
Admiralty district of _____]

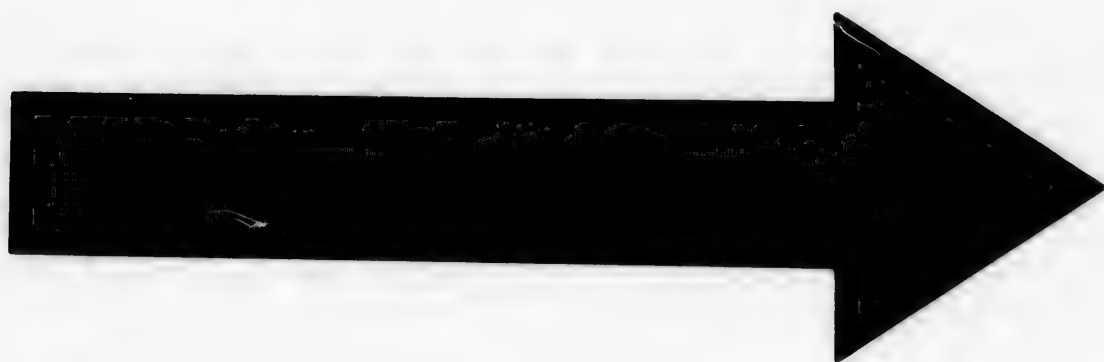
Whereas by your decree of the 18th you were pleased to pronounce in favour of the plaintiff [or defendant] and to condemn the defendant [or plaintiff] and the ship [or as the case may be] in the amount to be found due to the plaintiff [or defendant] [and in costs], and you were further pleased to order that an account should be taken, and to refer the same to the registrar [assisted by merchants] to report the amount due.

Now, I do report that I have [with the assistance of *here state names and description of assessors, if any*] carefully examined the accounts and vouchers and the proofs brought in by the plaintiff [or defendant] in support of his claim [or counter-claim], and having on the _____ day of _____, heard the evidence of [state names] who were examined as witnesses on behalf of the plaintiff and of [state names] who were examined as witnesses on behalf of the defendant, [and having heard the solicitors (or counsel) on both sides, or as the case may be], I find that there is due to the plaintiff [or defendant] the sum of \$ _____, [state sum in letters and figures] together with interest thereon as stated in the schedule hereto annexed. I am also of opinion that the plaintiff [or defendant] is entitled to the costs of this reference [or as the case may be].

Dated 18 .

(Signed) E. F.,

Registrar or District Registrar.



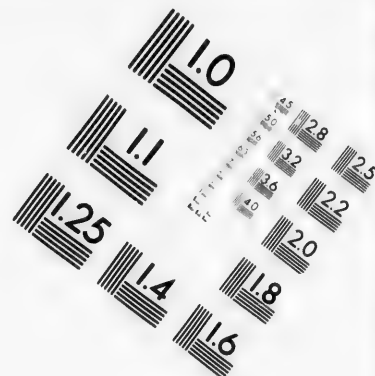
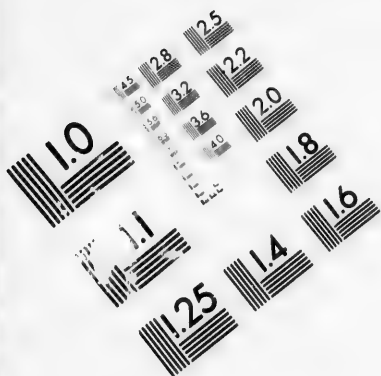
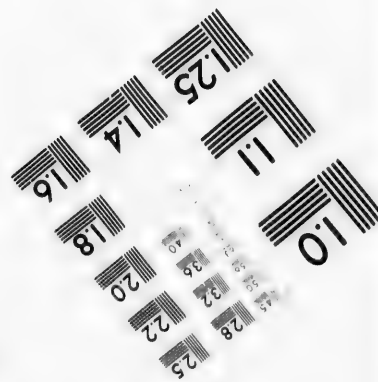
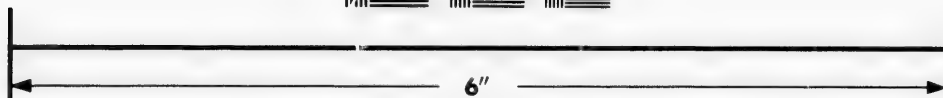
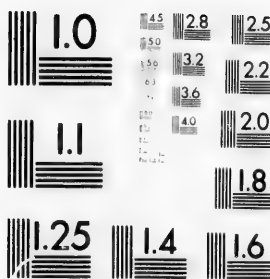
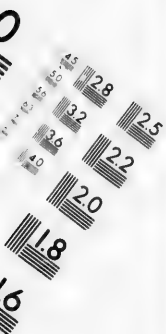


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503



SCHEDULE annexed to the foregoing report.

| | | Claimed. | | Allowed. | |
|-------|--|----------|------|----------|------|
| | | \$ | Cts. | \$ | Cts. |
| No. | | | | | |
| 1 | <p>[Here state as briefly as possible the several items of the claim with the amount claimed and allowed on each item in the columns for figures opposite the item].</p> | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| &c. | | | | | |
| Total | | - | - | - | - |

With interest thereon from the _____ day of _____
18____, at the rate of _____ per cent. per annum until
paid.

(Signed) E. F.,
Registrar or District Registrar.

Rule 49).

No. 44.

COMMISSION OF APPRAISEMENT.

(L.S.) [*Title of court and action*].

VICTORIA, ETC.

To the marshal of our Admiralty district of
[or the sheriff of the county of _____, or as the case may
be], greeting:

Whereas the judge of our said court [or the local judge in Admiralty of our said court for the Admiralty district of] has ordered that [state whether ship or cargo

and state name of ship and, if part only of cargo, state what part] shall be appraised.

We, therefore, hereby command you to reduce into writing an inventory of the said (ship or cargo, etc., as the case may be), and having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing, and signed by yourself and by the appraiser or appraisers, to file the same in the registry of our said court, together with this commission.

Given at _____, in our said court, under the seal
thereof, this _____ day of _____ 18 ____.

(Signed) E. F.,

Registrar or District Registrar.

Commission of appraisement.

Taken out by _____.

No. 45.

[Rule 149.]

COMMISSION OF SALE.

(L.S.) [Title of court and action].

VICTORIA, etc.

To the marshal of our Admiralty district of
(or the sheriff, etc., as in Form No. 44), greeting:

Whereas the judge of our said court (or the local judge, etc., as in Form No. 44) has ordered that (state whether ship or cargo and state name of ship, and if part only of cargo, what part) shall be sold. We, therefore, hereby command you to reduce into writing an inventory of the said (ship or cargo, etc., as the case may be), and to cause the said (ship or cargo, etc.), to be sold by public auction for the highest price that can be obtained for the same.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into our said court, and to file an account sale signed by you, together with this commission.

Given at _____, in our said court, under the seal
thereof, this _____ day of _____ 18 ____.

(Signed) E. F.

Registrar or District Registrar.

Commission of sale.

Taken out by _____.

name and description of ship] shall be removed from
to on a policy of insurance in the sum
of \$, being deposited in the registry of our said
court; and whereas a policy of insurance for the said sum
has been so deposited. We, therefore, hereby command
you to cause the said ship to be removed accordingly. And
we further command you, as soon as the removal has been
completed, to file a certificate thereof, signed by you in the
said registry, together with this commission.

Given at , in our said court, under the seal
thereof, this day of 18 .

(Signed) E. F.,
Registrar or District Registrar.

Commission of removal.

Taken out by

No. 48.

[Rule 149.

COMMISSION FOR DISCHARGE OF CARGO.

(L.S.) [*Title of court and action*].

VICTORIA, &c.

To the marshal of our Admiralty district of
[or the sheriff &c., as in Form No. 44]. Greeting :

Whereas the Judge of our said court [or the Local Judge,
&c., as in Form No. 44] has ordered that the cargo of the
ship shall be discharged. We therefore, hereby
command you to discharge the said cargo from on board
the said ship, and to put the same into some fit and proper
place of deposit. And we further command you, as soon
as the discharge of the said cargo has been completed, to
file your certificate thereof in the registry of our said court,
together with this commission.

Given at in our said court, under the seal
thereof, this day of 18 .

(Signed) E. F.
Registrar or District Registrar.

Commission for discharge of cargo.

Taken out by

152 *Exchequer Court—Admiralty.*

Rule 149].

No. 49.

COMMISSION FOR DEMOLITION AND SALE.

(In a Slave Trade case.)

(I.S.) [*Title of court and action*].

VICTORIA, &c.

To the marshal of our Admiralty district of
(or the sheriff, etc., as in Form No. 44). Greeting :

We hereby command you, in pursurance of a decree of the judge of our said court (or the Local Judge, etc., as in Form No. 44) to that effect, to cause the tonnage of the vessel to be ascertained by Rule No. 1 of the 21st section of *The Merchant Shipping Act, 1854*, (or by such rule as shall, for the time being be in force for the admeasurement of *British vessels*), and further to cause the said vessel to be broken up, and the materials thereof to be publicly sold in separate parts (together with her cargo if any) for the highest price that can be obtained for the same.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into our said court, and to file an account sale signed by you, and a certificate signed by you of the admeasurement and tonnage of the vessel, together with this commission.

Given at , in the said court, under the seal
thereof, this day of 18 .

(Signed) E. F.

Registrar or District Registrar.

Commission for demolition and sale.

Taken out by

No. 50.

Rule 154].

ORDER FOR INSPECTION.

[*Title of court and action*].

On the day of 18 .

Before Judge, etc.

The judge, on the application of (*state whether plaintiff or defendant*) ordered that the ship should be inspected by (*state whether by the marshal or by the assessors of the court, or as the case may be*), and that a report in

on
soon
above
judg
the
the
judg

writing of the inspection should be lodged by him (or them)
in the registry.

(Signed) E. F.,
Registrar or District Registrar.

No. 51

(Rule 155.)

NOTICE OF DISCONTINUANCE.

[Title of court and action].

Take notice that this action is discontinued.

Dated the day of 18 .

(Signed) A. B., plaintiff.

No. 52

(Rule 155.)

NOTICE TO ENTER JUDGMENT FOR COSTS.

[Title of court and action].

Take notice that I apply to have judgment entered for
my costs in this action.

Dated the day of 18 .

(Signed) C. D., defendant.

No. 53.

(Rule 159.)

NOTICE OF MOTION ON APPEAL.

In the Exchequer Court of Canada.

In Admiralty.

Between A. B., plaintiff;
and

C. D., defendant.

Take notice that this Honourable Court will be moved
on the day of 18 , or so
soon thereafter as counsel can be heard, on behalf of the
above named plaintiff A. B. (or defendant C. D.), that the
judgment (or order) of the Local Judge in Admiralty for
the Admiralty District of made herein and dated
the day of 18 , (or if only part of the
judgment or order is appealed from say) that so much of the

154 *Exchequer Court—Admiralty.*

judgment (or order) of the Local Judge in Admiralty for the Admiralty District of _____ made herein and dated the _____ day of _____ 18, as adjudges (or directs or orders as the case may be) that _____ (here set out the part or parts of the judgment or order which are appealed from) may be reversed (or rescinded) and that—(here set out the relief or remedy, if any, sought) and that the costs of this appeal, and before the Local Judge in Admiralty, may be paid by the _____ to the _____

Dated, etc.

Yours, etc.,

X. Y.,

Solicitor, etc., or, Agent, etc.

(To the above named defendant), (or plaintiff) and to _____, his solicitor or agent.

No. 54.

Rule 177].

RECEIVABLE ORDER.

Registry of the Exchequer Court of Canada
(or, for the Admiralty District of _____)

No.

18

[Title of court and action].

Sir,—

I have to request that you will receive from (state name of person paying in the money) the sum of _____ dollars on account in the above named action, and place the same to the credit of the account of the Registrar of the Exchequer Court of Canada (or, for the Admiralty District of _____).

(Signed) E. F.,

Registrar, or District Registrar.

To the Manager of (state name or style of bank to which the payment is to be made), or,

To the Deputy of the Minister of Finance and Receiver-General of Canada.

No. 55.

[Rule 179.]

ORDER FOR PAYMENT OUT OF COURT.

[Title of court and action].

I, _____, Judge of the Exchequer Court of Canada (or, as the case may be), hereby order payment of the sum of (state sum in letters and figures), being the amount (state whether found due for damages or costs, or tendered in the action or, as the case may be) to be made to (state name and address of party or solicitor to whom the money is to be paid) out of the (proceeds of sale of ship, &c., or as the case may be) now remaining in court.

Dated the _____ day of _____ 18

Witness, _____ (Signed) J. K.,
 E. F., _____ Judge,
 Registrar, _____ (or as the case may be).
 or District Registrar.

No. 56.

[Rule 180]

NOTICE FOR CAVEAT WARRANT.

[Title of court, or title of court and action].

Take notice that I, A.B., of _____ apply for a caveat against the issue of any warrant for the arrest of [state name and nature of property], and I undertake, within three days after being required to do so, to give bail to any action or counter-claim that may have been or may be brought against the same in this court in a sum not exceeding [state sum in letters] dollars, or to pay such sum into court.

My address for service is _____

Dated the _____ day of _____ 18 .
 (Signed) A.B.

No. 57.

[Rule 180.]

CAVEAT WARRANT.

[Title of court, or title of court and action].

[State Name of Ship, &c.]

Caveat entered this _____ day of _____ 18 .
 against the issue of any warrant for the arrest of [state

Caveat withdrawn the day of 18 .

Dated the day of 18 .
(Signed) A.B.

Caveat withdrawn this day of 18 .

Take notice that I, A. B., plaintiff [or defendant] in the above named action, apply for a caveat against the pay-

ment of any money [if for costs, add for costs, or as the case may be] out of the proceeds of the sale of [state whether ship or cargo, and name of ship, &c.] now remaining in court, without notice being first given to me.

[If the person applying for the caveat is not a party to the action, he must also state his address, and an address for service within three miles of the registry].

Dated the day of 18

(Signed)

A.B.

No. 61.

CAVEAT PAYMENT.

[Rule 132.]

[Title of court and action].

Caveat entered this day of 18
against the payment of any money [if for costs, add for costs, or as the case may be] out of the proceeds of the sale of [state whether ship or cargo, and if ship, state name of ship, &c.] now remaining in court, without notice being first given to [state name and address of person to whom, and address at which, notice is to be given].

On withdrawal of the caveat, add:—

Caveat withdrawn this day of 18

No. 62.

NOTICE FOR WITHDRAWAL OF CAVEAT.

[Rule 137.]

[Title of court and action].

Take notice that I withdraw the caveat [state whether caveat warrant, release, or payment entered by me in this action [or as the case may be]].

Dated the day of 18

(Signed)

A.B.

No. 68.

Rule 1891.

SUBPOENA.

(L.S.)

[Title of court and action].

VICTORIA, ETC.

To

Greeting :

We command you that, all other things set aside, you appear in person before the judge [or the registrar, or G.H.], a commissioner appointed by an order of our said court] at _____ on the _____ day of _____ 18____, at _____ o'clock in the _____ noon of the same day, and so from day to day as may be required, and give evidence in the above named action.

And herein fail not at your peril.

Given at _____, in our said court, under the seal
thereof, this _____ day of _____, 18 ____.

Subpœna.

Taken out by

No. 64.

Rule 1891.

SUBPŒNA DUCES TECUM.

The same as the preceding form, adding before the words "And herein fail not at your peril," the words "and that you bring with you for production before the said judge (or registrar or commissioner, as the case may be) the following documents, viz.,

(Here state the documents required to be produced).

No. 65.

Rule 1921.

ORDER FOR PAYMENT.

(L.S.)

[Title of court and action].

On the day of , 18 .

Before

Judge, etc., (or local judge of the Admiralty district of _____).

It is ordered that A. B. (plaintiff or defendant, &c.), do pay to C. D. (defendant or plaintiff, &c.) within days from the date hereof the sum of \$.

(state sum in letters and figures) being the amount (or balance of the amount) found due from the said A. B. to C. D. for (state whether for damages, salvage, or costs, or as the case may be) in the above-named action.

(Signed) E. F.,
Registrar or District Registrar.

No. 66.

ATTACHMENT.

[Rule 193.]

(L.S.)

[Title of court and action].

VICTORIA, etc.

To the marshal of our Admiralty district of (or the sheriff, etc., as in Form No. 44) greeting :

Whereas the judge of our said court (or the local judge in Admiralty, etc., as in Form No. 44) has ordered (state name and description of person to be attached) to be attached for (state briefly the ground of attachment).

We, therefore, hereby command you to attach the said , and to bring him before our said judge.
Given at , in our said court, under the seal thereof, this day of , 18 .

(Signed) E. F.,
Registrar or District Registrar.

Attachment.

Taken out by

No. 67.

[Rule 194.]

ORDER FOR COMMITTAL.

(L.S.)

[Title of court and action].

On the day of , 18 .
Before

Judge, etc.

(or local judge in Admiralty for the Admiralty District of).

Whereas A. B. (state name and description of person to be committed) has committed a contempt of court in that

160 *Exchequer Court—Admiralty.*

(state in what the contempt consists) and, having been this day brought before the judge on attachment, persists in his said contempt, it is now ordered, that he be committed to prison for the term of from the date hereof, or until he shall clear himself from his said contempt.

(Signed) E. F.,
Registrar or District Registrar.

Rule 194].

No. 68.

COMMITTAL.

[Title of court].

To
Receive into your custody the body (or bodies) of herewith sent to
you, for the cause hereinunder written; that is to say,
For (state briefly the ground of attachment).
Dated the day of , 18 .

(Signed) J. K.,
Witness, Judge, etc.
E. F., (or local judge in Admiralty for the
Registrar Admiralty district of).
or District Registrar.

Rule 202].

No. 69.

MINUTE ON FILING ANY DOCUMENT.

[Title of court and action].

I, A. B., (state whether plaintiff or defendant), file the following documents, viz.:

(Here describe the documents filed).

Dated the day of , 18 .
(Signed) A. B.

Forms.

161

No. 70.

MINUTE OF ORDER OF COURT.

[Rule 213.]

(Title of court and action).

On the day of , 18 .
Before

Judge, etc.

(or local judge in Admiralty for the Admiralty district of).

The judge, on the application of *state whether plaintiff or defendant* ordered (*state purport of order*).

No. 71.

MINUTE ON EXAMINATION OF WITNESSES.

[Rule 213.]

(Title of court and action).

On the day of , 18 .
Before

Judge, etc.

(or local judge, etc., as the case may be).

A. B. (*state whether plaintiff or defendant*) produced as witnesses

(*Here state names of witnesses in full*).

who, having been sworn (*or as the case may be*), were examined orally (*if by interpretation, add by interpretation of*).

No. 72.

MINUTE OF DECREE.

[Rule 213.]

(Title of court and action).

On the day of , 18 .
Before

Judge, etc.

(or local judge, etc., as the case may be).

(1) Decree for an ascertained sum:

The judge having heard (*state whether plaintiff and defendant, or their counsel or solicitors, or as the case may be*), and having been assisted by (*state names and descrip-*

tions of assessors, if any,) pronounced the sum of (state sum in letters and figures) to be due to the plaintiff (or defendant), in respect of his claim (or counter-claim), together with costs (if the decree is for costs). And he condemned—

- (a) in an action in rem where bail has not been given ;
the ship (or cargo ex the ship
or proceeds of the ship , or of the cargo
ex the ship or as the case may be) in the
said sum (and in costs).
- (b) in an action in personam, or in rem where bail has
been given ;
the defendant (or plaintiff) and his bail (if bail
has been given) in the sum of (and in costs).

(2) *Decree for a sum not ascertained :*

The judge having heard, etc., (as above) pronounced in favour of the plaintiff's claim (or defendant's counter-claim) and condemned the ship (or cargo, etc., or the defendant or plaintiff) and his bail (if bail has been given) in the amount to be found due to the plaintiff (or defendant) (and in costs). And he ordered that an account should be taken, and

- (a) If the amount is to be assessed by the judge,
that all accounts and vouchers, with the proofs in
support thereof, should be filed within
days (or as the case may be).
- (b) If the judge refers the assessment to the registrar,
referred the same to the registrar (assisted by mer-
chants), to report the amount due, and ordered
that all accounts, &c., (as above).

(3) *Decree on dismissal of action :*

The judge having heard, etc., (as above) dismissed the action (if with costs, add) and condemned the plaintiff and his bail (if bail has been given) in costs.

(4) *Decree of condemnation of a derelict subject
to salvage :*

The judge, having heard, etc., (as above) pronounced the sum of (state sum in letters and figures) to be due to

A. B., etc., for salvage, together with costs, and subject thereto condemned the said ship, (or cargo or proceeds of ship or of cargo, etc., as the case may be) as a droit and perquisite of Her Majesty in Her office of Admiralty.

(5) Decree in action for possession:

The judge having heard, &c., decreed that possession of the ship should be given to the plaintiff, and condemned the defendant (and his bail) in costs.

(6) Decree of condemnation in a slave trade action:

The judge having heard, etc. (as above), pronounced that the vessel, name unknown (or as the case may be), seized by H.M.S. *Torch* on the _____ day of _____, 18____, had been at the time of her seizure engaged in or fitted out for the slave trade in contravention of the treaties existing between Great Britain and _____, or in violation of the Acts 6 Geo. IV. c. 113, and 36 & 37 V. c. 88, or as the case may be, and he condemned the said vessel (together with the slaves, goods, and effects on board thereof) as forfeited to Her Majesty (or condemned the said vessel and slaves as forfeited, &c., but ordered that the cargo should be restored to the claimant, or, as the case may be).

The judge further ordered that the said slaves (or the slaves then surviving), consisting of _____ men, _____ women, and _____ boys and _____ girls, should be delivered over to (state to whom, or how the slaves are to be disposed of).

If the vessel has been brought into port, add:—

The judge further ordered that the tonnage of the vessel should be ascertained by the rule in force for the admeasurement of British vessels, and that the vessel should be broken up, and that the materials thereof should be publicly sold in separate parts, together with her cargo (if any); _____ or _____

If the vessel has been abandoned or destroyed by the seizers prior to adjudication, and the court is satisfied that the abandonment or destruction was justifiable, add:—

The judge further declared that, after full consideration by the court of the circumstances of the case, the seizers had satisfied the court that the abandonment (or destruc-

tion) of the vessel was inevitable or otherwise under the circumstances proper and justifiable.

(7) *Decree of restitution in a slave trade action :*

The judge having heard, &c., pronounced that it had not been proved that the vessel was engaged in or fitted out for the slave trade, and ordered that the said vessel should be restored to the claimant, together with the goods and effects on board thereof :

add, as the case may be,
but without costs or damages,

or

on payment by the said claimant of the costs incurred by the seizers in this action ;

or

and awarded to the said claimant costs and damages in respect of the detention of the said vessel, and (referred the same to the registrar (assisted by merchants) to report the amount thereof, and) directed that all accounts and vouchers with the proofs in support thereof, if any, should be filed within
days.

(8) *Decree in case of capture from pirates :*

The judge having heard, &c., pronounced that the said junk *Tecumseh* (and her cargo) had been at the time of the capture thereof by H.M.S. *Torch* the property of pirates, and condemned the same as a droit and perquisite of Her Majesty in Her office of Admiralty ;

or

pronounced that the said junk *Tecumseh* (and her cargo) had prior to her re-capture by H.M.S. *Torch*, etc., been captured by pirates from the claimant (*state name and description of former owner*), and he decreed that the same should be restored to the said claimant as the lawful owner thereof, on payment to the re-captors of *one-eighth* part of the true value thereof in lieu of salvage. The judge also directed that the said junk (and her cargo) should be appraised ;

If the junk, &c., has been captured after an engagement with the pirates, and if there is a claim for bounty, add :—

The judge further declared that the persons attacked or engaged by H.M.S. *Torch*, etc., on the occasion of the capture of the said junk were pirates, that the total number of pirates so attacked or engaged was about _____ of that number were captured, and that the only vessel engaged was H.M.S. *Torch* (or, as the case may be).

(9) *Decree of condemnation under Pacific Islanders Protection Acts:*

The judge, having heard, etc., pronounced that the ship had been at the time of her seizure (or during the voyage on which she was met) employed (or fitted out for employment) in violation of the Pacific Islanders Protection Acts, 1872 and 1875, and he condemned the said ship (and her cargo, and all goods and effects found on board, or, as the case may be), as forfeited to Her Majesty.

The judge further ordered that the said ship (and her cargo, and the said goods and effects) should be sold by public auction, and that the proceeds should be paid into court.

(10) *Decree of condemnation under Foreign Enlistment Act:*

The judge, having heard, etc., pronounced that the ship had been (built, equipped, commissioned, despatched, or used, as the case may be) in violation of the Foreign Enlistment Act, 1870, and he condemned the said ship and her equipment (and the arms and munitions of war on board thereof, or as the case may be) as forfeited to Her Majesty.

(11) *Decree of condemnation under Customs or Revenue Acts:*

The judge, having heard, etc., condemned the ship (or cargo or proceeds, etc., as the case may be) as forfeited to Her Majesty for violation of the Act (state what Act).

(12) *Decree for pecuniary forfeiture or penalty under Customs Act or other Act:*

The judge having heard, &c., pronounced the said goods to have been landed (or other illegal act to have been done) in violation of the Act (state what Act) and condemned the defendant C. D. (the owner of the said goods, or as the case may be) in the penalty of imposed by the said Act (and in costs).

Rule 213j.

No. 73.

MINUTES IN AN ACTION FOR DAMAGE BY COLLISION.

A. B., &c.

No. .

against

The Ship "Mary."

- 18 .
Jan. 3 A writ of summons (and a warrant) was (or were) issued to X.Y. on behalf of A.B., etc., the owners of the ship "Jane" against the ship "Mary" (and freight, or as the case may be) in an action for damage by collision. Amount claimed \$1,000.
- " 5 Y.Z. filed notice of appearance on behalf of C.D., &c., the owners of the ship "Mary."
- " 6 X.Y. filed writ of summons.
- " " The Marshal filed warrant.
- " 7 Y.Z. filed bailbond to answer judgment as against the defendants (or as the case may be) in the sum of \$1,000, with affidavit of service of notice of bail.
- " " A release of the ship "Mary" was issued to Y.Z.
- " 8 X.Y. filed Preliminary Act (and notice of motion for pleadings).
- " " Y.Z. filed Preliminary Act.
- " 10 The judge having heard solicitors on both sides (or as the case may be), ordered pleadings to be filed.
- " 11 X.Y. filed statement of claim.
- " 14 Y.Z. filed defence (and counter-claim.)
- " 15 X.Y. filed reply.
- " 16 The judge having heard solicitors on both sides (or as the case may be) ordered both plaintiffs and defendants to file affidavits of discovery, and to produce, if required, for mutual inspection.

tion, the documents therein set forth within
three days.

- Jan. 18 X.Y. filed affidavit of discovery.
 " 19 Y.Z. filed affidavits of discovery.
 " 22 X.Y. filed notice of trial.
 " 26 X.Y. produced as witnesses (*state names of witnesses*), who, having been sworn, were examined orally in court, the said (*state names*) having been sworn and examined by interpretation of (*state name and interpreter*) interpreter of the language. Present (*state names of assessors present, if any*) assessors.

Y.Z. produced as witnesses, etc. (*as above*).
 The judge having heard (*state whether plaintiffs and defendants, or their counsel or solicitors, as the case may be*), and having been assisted by (*state name and descriptions of assessors if any*), pronounced in favour of the plaintiffs (*or defendants*) and condemned the defendants (*or plaintiffs*) and their bail (*if bail has been given*) in the amount to be found due the plaintiffs (*or defendant*) (and in costs). And he ordered that an account should be taken, and referred the same to the registrar (assisted by merchants) to report the amount due, and ordered that all accounts and vouchers, with the proofs in support thereof, should be filed within *days (or as the case may be)*.

- Feb. 5 X.Y. filed claim, with accounts and vouchers in support thereof (numbered 1 to), and affidavits of (*state names of deponents, if any.*)
 " 8 Y.Z. filed accounts and vouchers (numbered 1 to) in answer to claim.
 " 9 X.Y. filed notice for hearing of reference.
 " 15 X.Y. (or Y.Z.) filed registrar's report, etc.

Here insert address for service of documents required to be served on the defendants.

Here insert address for service of documents required to be served on the plaintiffs.

Note.—The above minutes are given as such as might ordinarily be required in an action *in rem* for damage by collision, where pleadings have been ordered. In some actions many of these minutes would be superfluous. In others additional minutes would be required.

II. TABLES OF FEES TO BE TAKEN BY THE REGISTRARS,
MARSHALS AND PRACTITIONERS, &C., IN ADMIRALTY
PROCEEDINGS IN THE EXCHEQUER COURT OF CANADA.

I.—BY THE REGISTRAR.

1. *For sealing or preparing Instruments, &c.*

| | \$ | cts. |
|--|----|------|
| For sealing any writ of summons or other document required to be sealed | | 50 |
| For preparing any warrant, release, commission, attachment, or other instrument, required to be sealed, or for attending the execution of any bailbond | 2 | 00 |
| For preparing a receivable order or a receipt for money to be paid out of court..... | 1 | 00 |
| For preparing and sending any notice, or issuing any appointment | | 50 |
| For preparing any other document for every folio | | 80 |

NOTE.—The fees for preparing shall include drawing and fair-copying or engrossing.

2. *For Filing.*

| | | |
|--|----|----|
| On filing any instrument or other document | \$ | 20 |
|--|----|----|

3. *For Evidence, &c.*

| | | |
|--|----|------|
| For attending at examination of any witness, per hour | \$ | 1 00 |
| For administering any oath or declaration | | 20 |
| For taking down and certifying the evidence of any witness examined before him, when the same is not taken down by a shorthand writer, for every folio | | 20 |

4. *For the Trial, &c.*

| | | |
|---|----|------|
| On setting down action for trial..... | \$ | 1 00 |
| For attendance at the trial of an action, to be paid by the party whose case is proceeding, per hour..... | | 1 00 |
| Swearing each witness..... | | 20 |
| On a final decree in an uncontested action | 2 | 00 |
| On a final decree in a contested action | 4 | 00 |
| For attendance before the judge when any order is made or act done, other than pronouncing a final decree | 1 | 00 |

NOTE.—The above fees shall include the entry of the decree or order in the minute book.

Fees.

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5. For References.

| | |
|--|---------------|
| For hearing any reference, according to the case, per day..... | {From \$ 5 00 |
| For preparing the report of a reference..... | {To 15 00 |
| | 5 00 |

6. For Taxations.

| | |
|--|------|
| For taxing a bill of costs:— | |
| If the bill does not exceed ten folios | 2 00 |
| For every folio beyond ten | 20 |

7. For Office Copies, Searches, &c.

| | |
|--|----|
| For a copy of any document, for every folio (in addition to the fee for sealing) | 10 |
| For search | 20 |
| For a general search | 50 |

NOTE.—No search-fee is to be charged to a party to the action, while the action is pending, or for one year after its termination, or to any seaman.

II.—By THE ASSESSORS.

| | |
|---|---------------|
| For each nautical or other assessor, whether at the examination of witnesses or at the trial of an action, or upon any assessment of damages, or taking of an account, according to the case, in the discretion of the judge, per day | {From \$ 5 00 |
| | {To 25 00 |

NOTE.—The above fees shall be paid to the registrar, for the assessors, and in the first instance by the party preferring the claim.

III.—By A COMMISSIONER TO EXAMINE WITNESSES.

| | |
|--|-------|
| For administering any oath or declaration | \$ 20 |
| For taking down and certifying the evidence of any witness examined before him, when the same is not taken down by a shorthand writer, for every folio | 20 |

IV.—By A COMMISSIONER TO TAKE BAIL.

| | |
|---|------|
| For attending the execution of any bailbond | 2 00 |
| For taking any affidavit of justification..... | 50 |

V.—By THE MARSHAL OR SHERIFF.

| | |
|---|------|
| For the service of a writ of summons or subpoena, if served by the marshal or a sheriff | 1 00 |
|---|------|

| | |
|---|---------|
| For executing any warrant or attachment | \$ 4 00 |
| For keeping possession of any ship, goods, or ship and goods (exclusive of any payments neces- sary for the safe custody thereof), for each day..... | 50 |

NOTE.—No fee shall be allowed to the marshal for the custody and possession of property under arrest, if it consists of money in a bank, or of goods stored in a bonded warehouse, or if it is in the custody of a custom-house officer or other authorized person.

| | |
|--|---------|
| On release of any ship, goods, or person from arrest | \$ 2 00 |
| For attending the unlivery of cargo, for each day.. | 8 00 |
| For executing any commission of appraisement, sale, or appraisement and sale, exclusive of the fees, if any, paid to the appraiser and auctioneer | 4 00 |
| For executing any other commission or instru- ment..... | 4 00 |
| On the gross proceeds of any ship, or goods, etc., sold by order of the court:— | |
| If not exceeding \$400 | 4 00 |
| For every additional \$400, or part thereof..... | 2 00 |

NOTE.—If the marshal, being duly qualified, acts as auctioneer, he shall be allowed a double fee on the gross proceeds.

| | |
|---|---------|
| For attendance at trial of an action to be paid by the party whose case is proceeding, per hour | \$ 1 00 |
| Calling each witness..... | 20 |

NOTE.—If the marshal or his officer is required to go any distance in execution of his duties, a reasonable sum may be allowed for travelling, boat-hire, or other necessary expenses in addition to the preceding fees, but not to exceed 10 cents per mile travelled.

VI.—FEES TO BE TAKEN BY APPRAISERS.

| | |
|---|---------------------------|
| Each, per appraisement | (From \$ 2 50 To 10 00 |
| (This fee may be increased to a sum not exceed- ing \$30.00 in the discretion of the judge). | |

VII.—BY THE SOLICITOR.

| | |
|--|------|
| Retaining fee | 2 00 |
| For preparing a writ of summons (to include attend- ances in the registry for sealing the same) ... | 2 50 |

Fees.

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| | |
|---|-----------------------|
| For bespeaking and extracting any warrant or other instrument prepared in the registry (to include attendances) | \$ 1 00 |
| For serving a writ of summons or a subpoena | 1 00 |
| For taking instructions for a statement of claim or defence | 4 00 |
| For drawing a statement of claim or defence | 4 00 |
| For taking instructions for any further pleading ... | 1 00 |
| For drawing any further pleading | 2 00 |
| For drawing any other document, for every folio ... | 20 |
| For fair-copying or engrossing any document, for every folio | 10 |
| For taking instructions for any affidavit (unless made by the solicitor or his clerk) or for interrogatories or answers, according to the nature or importance thereof..... | From 1 00 To 4 00 |
| For taking instructions for brief | From 1 00 To 4 00 |
| For attending counsel in conference of consultation | 2 00 |
| For attending to fee counsel | 2 00 |
| For attendance on any motion before the judge:— | |
| If with counsel | 2 00 |
| If without counsel | 4 00 |
| For attending the examination of witnesses before the trial, for each day:— | |
| If with counsel | 4 00 |
| If without counsel | 8 00 |
| For attendance at the trial, for each day..... | From 4 00 To 12 00 |
| For attendance at the delivery of judgment, if reserved | 2 00 |
| For attendance at a hearing of a reference to the registrar, for each day:— | |
| If with counsel | From 4 00 To 8 00 |
| If without counsel | From 4 00 To 20 00 |
| For any other necessary attendance for the judge, or in the registry, or on the marshal, or on the adverse party or solicitor, in the course of the action | 1 00 |
| <i>Note.</i> —Where more than one document can conveniently be filed, or one document can be filed, and another bespoken, at the same time, the fee for one attendance only shall be allowed. | |
| For any necessary letter to the adverse party | \$ 50 |
| For serving any notice | 20 |

| | |
|--|-------|
| For extracting and collating any office copy obtained from the registry office, for every folio... | \$ 10 |
| For correcting the press, for every folio | 5 |
| For attending the taxation of any bill of costs, not exceeding <i>ten</i> folios | 2 00 |
| For every folio beyond <i>ten</i> | 10 |

VIII.—BY COUNSEL.

| | |
|---|------------------------|
| Retaining fee | \$ 5 00 |
| For settling any pleading, interrogatories, or answers, &c. | From 5 00 To 20 00 |
| For any necessary consultation in the course of the action | From 5 00 To 10 00 |
| For any motion | From 5 00 To 15 00 |
| For the examination of witnesses before the trial, for each day | From 10 00 To 20 00 |
| For the trial of an uncontested action..... | 10 00 |
| For the trial of a contested action, for the first day | From 15 00 To 50 00 |
| For each day after the first | From 10 00 To 25 00 |
| For attending judgment if reserved..... | From 5 00 To 10 00 |
| For the hearing of a reference to the registrar, for each day | From 10 00 To 25 00 |

Note.—Where the same practitioner acts as both counsel and solicitor, he may, for any proceeding in which a counsel's fee might be allowed, charge such fee in lieu of a solicitor's fee.

IX.—BY SHORTHAND WRITERS.

| | |
|---|-------|
| For taking down and transcribing the evidence, certifying the transcript and transmitting the same to the registrar and supplying three copies thereof to the registrar, per folio..... | \$ 20 |
| If for any reason the evidence is not required to be transcribed, for each hour occupied by the examination | 1 50 |
| Such fees shall in the first instance be paid to the registrar for the shorthand writer by the party calling the witness. | |

If any such fee is not paid by the party liable there-
for it may be paid by any other party to the
proceeding and allowed as a necessary disburse-
ment in the cause, or the judge may make such
order in respect of such evidence and the dis-
posal of the action or proceeding as to him
seems just.

Note.—If evidence is taken down by a shorthand writer no fee for
taking down and certifying to such evidence shall be allowed to the regis-
trar or commissioner.

X.—By WITNESSES.

| | |
|---|---------|
| To witness residing not more than three miles from the place to which summoned, per day..... | \$ 1 00 |
| To witnesses residing over three miles from such place..... | 1 25 |
| Barristers and attorneys and solicitors, physicians and surgeons, when called upon to give evidence in consequence of any professional service ren- dered by them, or to give opinions | 5 00 |
| Engineers and surveyors, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per day..... | 5 00 |
| If the witnesses attend in one cause only, they will be entitled to the full allowance. | |
| If they attend in more than one cause they will be entitled to a proportionate part in each cause only. | |
| The travelling expenses of witnesses over ten miles, shall be allowed according to the sums reason- ably and actually paid, but in no case shall exceed ten cents per mile travelled. | |

\$ 20

1 50

ORDERS IN COUNCIL APPROVING OF RULES, Etc.

The following public documents, Imperial and Canadian, appeared in the Canada Gazette of June 10, 1893, preceded by a Public Notice of the Honourable the Secretary of State, 6th June, 1893, to the effect that His Excellency the Governor-General in Council, and Her Majesty in Council, had approved of the General Rules and Orders regulating the Practice and Procedure (including fees and costs), of the Exchequer Court of Canada in the exercise of its jurisdiction, powers and authorities as a Court of Admiralty, being the General Rules and Orders set forth in the preceding pages :—

CERTIFIED Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 10th December, 1892.

On a report dated 6th December, 1892, from the Minister of Justice submitting for Your Excellency's consideration certain general rules and orders, made by the judge of the Exchequer Court of Canada on the 5th December instant, for regulating the practice and procedure in that court in Admiralty cases. These rules and orders, under the provisions of section 25 of *The Admiralty Act*, 1891, require the approval of Your Excellency in Council, and under the provisions of section 7 of *The Colonial Courts of Admiralty Act*, 1890, they will not come into operation

until they have been approved also by Her Majesty in Council.

The Minister is of opinion that they are such as should receive approval of Your Excellency in Council, and he recommends accordingly.

The Minister further recommends that a copy of them be transmitted to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies with a request that he will cause them to be submitted to Her Majesty in Council for approval.

The Minister further suggests that in the Despatch transmitting these rules and orders, attention be called, with a view to such action thereunder as to Her Majesty in Council may seem proper, to the provisions of sub-section 2 of section 7 of *The Colonial Courts of Admiralty Act* under which Her Majesty in Council may, in approving rules made under the section, declare that rules with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied or added to, without the approval required by the section

The Committee advise that Your Excellency be moved to take action in the sense of the recommendation of the Minister of Justice.

All of which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE,

Clerk of the Privy Council.

To the Honourable

The Minister of Justice.

DOWNING STREET, 6th April, 1893.

MY LORD,—I have the honour to transmit to you, with reference to your despatch, No. 331, of the 14th of December, an Order of Her Majesty in Council approving the

176 *Exchequer Court—Admiralty.*

rules of Court regulating the practice and procedure in Admiralty cases in the Exchequer Court of Canada.

I have, etc.,

(Sd.) R. H. MEADE,

For the S. of S.

The Officer Administering
The Government of Canada.

| Date. | Description of Document. |
|-----------------|---|
| 15th March..... | Order of Her Majesty in Council. (4 spare copies). |

AT THE COURT AT WINDSOR,

The 15th day of March, 1893.

PRESENT :

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT,

LORD CHAMPERLAIN,

MR. BRYCE.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 24th day of February, 1893, in the words following, viz. :—

“ WHEREAS by an Act passed in the fifty-fourth year of Your Majesty's reign, entitled, ‘*The Colonial Courts of Admiralty Act, 1890*,’ it was, amongst other things, provided that Rules of Court for regulating the procedure and practice (including fees and costs) in a court in a British possession

in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said court in the exercise of its ordinary civil jurisdiction respectively, are made, but that such rules of court shall not come into operation until they have been approved by Your Majesty in Council, but on coming into operation shall have full effect as if enacted in the said Act.

"And whereas it appears to Us and to Your Majesty's Secretary of State for the Colonies to be expedient that the Rules of Court hereto annexed, having been duly prepared by the proper Authority as required by the said Act, should be established and be in force in the Exchequer Court of Canada in its Admiralty jurisdiction.

"And whereas the provisions of sub-section 2 of section 7 of the aforesaid Act empower Your Majesty in Council in approving rules made under this section to declare that the rules so made with respect to any matters which appear to Your Majesty to be matters of detail or of local concern may be revoked, varied, or added to, without the approval required by this section.

"And whereas it appears to Us that Rules 158 to 176 relating to appeals from the judgment or order of a local Judge in Admiralty to the Exchequer Court; Rule 224, as to cases in which half fees only should be allowed; and the Tables of Fees appended to the Rules should be considered to come within the scope of the sub-section in question, and be declared to be subject to revocation, variation, or addition, without the approval of Your Majesty in Council.

"Now, therefore, We beg leave humbly to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the Rules of Court hereto annexed shall be the Rules of Court for the said Exchequer Court of Canada in its Admiralty jurisdiction, and shall be established and be in force in the said court, and to declare that Rules 158 to 176 (both inclusive), Rule 224, and the Tables

of Fees appended to the Rules may be revoked, varied or added to without the approval of Your Majesty in Council."

Her Majesty, having taken the said Memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve of what is therein proposed, and to direct that the Rules of Court hereto annexed shall be the Rules of Court for the said Exchequer Court of Canada in its Admiralty jurisdiction and shall be established and be in force in the said court, and to declare that Rules 158 to 176 (both inclusive), Rule 224, and the Tables of fees appended to the Rules may be revoked, varied, or added to, without the approval of Her Majesty in Council. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary direction herein accordingly.

. C. L. PEEL.

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"THE COLONIAL COURTS OF ADMIRALTY ACT, Secs. 1, 2.
1890," (Imp.).

An Act to amend the Law respecting the exercise of Admiralty Jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom (a).

[25th July, 1890.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Colonial Courts of Admiralty Act, 1890.*" Short title.

2. (1) Every court of law in a British possession, which is for the time being declared in pursuance of this Act to be a court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned, and may, for the purpose of that jurisdiction, exercise all the powers which it possesses for the purpose of its other civil jurisdiction; and such court, in reference to the jurisdiction conferred by this Act, is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression "court of law" for the purposes of this section includes such Governor.

(2) The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial

(a) 53 & 54 V. c. 27. In force in Canada July 1st, 1891. See sec. 16 and *Bergeman v. The Aurora*, 3 E. C. R. 228, 235.

Sec. 2.

Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.

Jurisdiction.

(3) Subject to the provisions of this Act any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a Colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression "Colonial Court of Admiralty" were therein substituted for "Vice-Admiralty Court" or for other expressions respectively referring to such Vice-Admiralty Courts or the judge thereof; and the Colonial Court of Admiralty shall have jurisdiction accordingly.

Provided as follows:—

- (a) Any enactment in an Act of the Imperial Parliament referring to the Admiralty jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales; and—
- (b) A Colonial Court of Admiralty shall have, under the Naval Prize Act, 1864, and under the Slave Trade Act, 1873, and any enactment relating to prize or the slave trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorized, shall not, by virtue of this Act, exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to prize; and—
- (c) A Colonial Court of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment; and—
- (d) A Colonial Court of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at sea, or

26 & 28 Vict.
c. 25.
36 & 37 Vict.
c. 88.

under any Act providing for the discipline of Her Majesty's Navy, than may be, from time to time, conferred on such court by Order in Council. Secs. 3-5.

(4) Where a Court in a British possession exercises in respect of matters arising outside the body of a county or other like part of a British possession any jurisdiction exercisable under this Act, that jurisdiction shall be deemed to be exercised under this Act and not otherwise.

3. The legislature of a British possession may, by any Colonial law,— Power of
Colonial legis-
lature as to
Admiralty
jurisdiction.

- (a) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit territorially or otherwise, the extent of such jurisdiction; and—
- (b) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction, under such regulations and with such appeal (if any), as may seem fit:

Provided that any such Colonial law shall not confer any jurisdiction which is not, by this Act, conferred upon a Colonial Court of Admiralty.

4. Every Colonial law, which is made in pursuance of this Act, or affects the jurisdiction of, or practice or procedure in any court of such possession in respect of the jurisdiction conferred by this Act, or alters any such Colonial law as above in this section mentioned, which has been previously passed, shall unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed. Reservation of
Colonial law
for Her
Majesty's
assent.

5. Subject to rules of court under this Act, judgments of a court in a British possession given or made in the Local Admi-
ralty appeal.

Sec. 6.

exercise of the jurisdiction conferred on it by this Act, shall be subject to the like local appeal, if any, as judgments of the court in the exercise of its ordinary civil jurisdiction, and the court having cognizance of such appeal shall for the purpose thereof, possess all the jurisdiction by this Act conferred upon a Colonial Court of Admiralty.

Admiralty
appeal to the
Queen in
Council.

6. (1) The appeal from a judgment of any court in a British possession in the exercise of the jurisdiction conferred by this Act, either where there is as of right no local appeal or after a decision on local appeal, lies to Her Majesty the Queen in Council.

(2) Save as may be otherwise specially allowed in a particular case by Her Majesty the Queen in Council, an appeal under this section shall not be allowed—

(a) from any judgment not having the effect of a definitive judgment unless the court appealed from has given leave for such appeal, nor—

(b) from any judgment unless the petition of appeal has been lodged within the time prescribed by rules, or if no time is prescribed within six months from the date of the judgment appealed against, or if leave to appeal has been given, then from the date of such leave.

(3) For the purpose of appeals under this Act, Her Majesty the Queen in Council and the Judicial Committee of the Privy Council shall, subject to rules under this section, have all such powers for making and enforcing judgments, whether interlocutory or final, for punishing contempts, for requiring the payment of money into court, or for any other purpose, as may be necessary, or as were possessed by the High Court of Delegates before the passing of the Act transferring the powers of such court to Her Majesty in Council, or as are, for the time being, possessed by the High Court in England or by the court appealed from in relation to the like matters as those forming the subject of appeals under this Act.

(4) All Orders of the Queen in Council or the Judicial Committee of the Privy Council for the purposes aforesaid

or otherwise in relation to appeals under this Act shall have full effect throughout Her Majesty's dominions, and in all places where Her Majesty has jurisdiction.

(5) This section shall be in addition to and not in derogation of the authority of Her Majesty in Council or the Judicial Committee of the Privy Council arising otherwise than under this Act, and all enactments relating to appeals to Her Majesty in Council or to the powers of Her Majesty in Council or the Judicial Committee of the Privy Council in relation to those appeals, whether for making rules and orders or otherwise shall extend, save as otherwise directed by Her Majesty in Council, to appeals to Her Majesty in Council under this Act.

7. (1) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made: Rules of court.

Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act; and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(2) It shall be lawful for Her Majesty in Council, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied or added to, without the approval required by this section.

(3) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full court, or by

Secs. 8, 9.

any judge or judges thereof, and subject to any rules, where the ordinary civil jurisdiction of the court can, in any case, be exercised by a single judge, any jurisdiction conferred by this Act may, in the like case, be exercised by a single judge.

Droits of
Admiralty
and of the
Crown.

8. (1) Subject to the provisions of this section nothing in this Act shall alter the application of any droits of Admiralty or droits of or forfeitures to the Crown in a British possession; and such droits and forfeitures, when condemned by a court of a British possession in the exercise of the jurisdiction conferred by this Act, shall, save as is otherwise provided by any other Act, be notified, accounted for and dealt with in such manner as the Treasury from time to time direct, and the officers of every Colonial Court of Admiralty and of every other court in a British possession exercising Admiralty jurisdiction shall obey such directions in respect of the said droits and forfeitures as may be, from time to time, given by the Treasury.

(2) It shall be lawful for Her Majesty the Queen in Council by Order to direct that, subject to any conditions, exceptions, reservations and regulations contained in the Order, the said droits and forfeitures condemned by a court in a British possession shall form part of the revenues of that possession either for ever or for such limited term or subject to such revocation as may be specified in the Order.

(3) If and so long as any of such droits or forfeitures by virtue of this or any other Act form part of the revenues of the said possession the same shall, subject to the provisions of any law for the time being applicable thereto, be notified, accounted for and dealt with in manner directed by the Government of the possession, and the Treasury shall not have any power in relation thereto.

Power to
establish Vice-
Admiralty
Courts.

9. (1) It shall be lawful for Her Majesty, by commission, under the Great Seal, to empower the Admiralty to establish in a British possession any Vice-Admiralty Court or Courts.

(2) Upon the establishment of a Vice-Admiralty Court in a British possession, the Admiralty, by writing under

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their hands and the seal of the office of Admiralty, in such form as the Admiralty may direct, may appoint a judge, registrar, marshal and other officers of the court, and may cancel any such appointment; and in addition to any other jurisdiction of such court, may (subject to the limits imposed by this Act or the said commission from Her Majesty) vest in such court the whole or any part of the jurisdiction by or by virtue of this Act conferred upon any courts of that British possession; and may vary or revoke such vesting, and while such vesting is in force the power of such last-mentioned courts to exercise the jurisdiction so vested shall be suspended.

Provided that—

- (a) nothing in this section shall authorize a Vice-Admiralty Court so established in India or in any British possession having a representative legislature, to exercise any jurisdiction except for some purpose relating to prize, to Her Majesty's Navy, to the slave trade, to the matters dealt with by the Foreign Enlistment Act, 1870, or the Pacific Islanders Protection Acts, 1872 and 1875, or to matters in which questions arise relating to treaties or conventions with foreign countries, or to international law ^{33 & 34 Vict. c. 90.} and— ^{35 & 36 Vict. c. 19.}
- (b) in the event of a vacancy in the office of judge, registrar, marshal or other officer of any Vice-Admiralty Court in a British possession, the Governor of that possession may appoint a fit person to fill the vacancy until an appointment to the office is made by the Admiralty. ^{38 & 39 Vict. c. 51.}
- (3) The provisions of this Act with respect to appeals to Her Majesty in Council from courts in British possessions in the exercise of the jurisdiction conferred by this Act, shall apply to appeals from Vice-Admiralty Courts, but the rules and orders made in relation to appeals from Vice-Admiralty Courts may differ from the rules made in relation to appeals from the said courts in British possessions.

Secs. 10-13.

(4) If Her Majesty at any time by commission under the Great Seal so directs, the Admiralty shall, by writing under their hands and the seal of the office of Admiralty, abolish a Vice-Admiralty Court established in any British possession under this section, and upon such abolition the jurisdiction of any Colonial Court of Admiralty in that possession which was previously suspended shall be revived.

Power to appoint a vice-admiral.

10. Nothing in this Act shall affect any power of appointing a vice-admiral in and for any British possession or any place therein, and whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the Governor of the possession shall be *ex-officio* vice-admiral thereof.

Exception of Channel Islands and other possessions.

11. (1) The provisions of this Act with respect to Colonial Courts of Admiralty shall not apply to the Channel Islands.

(2) It shall be lawful for the Queen in Council by Order to declare, with respect to any British possession which has not a representative legislature, that the jurisdiction conferred by this Act on Colonial Courts of Admiralty shall not be vested in any court of such possession, or shall be vested only to the partial or limited extent specified in the Order.

Application of Act to courts under Foreign Jurisdiction Acts.

12. It shall be lawful for Her Majesty the Queen in Council by Order to direct that this Act shall, subject to the conditions, exceptions and qualifications (if any) contained in the Order, apply to any Court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions which is named in the Order as if that Court were a Colonial Court of Admiralty, and to provide for carrying into effect such application.

Rules for procedure in slave trade matters.

13. (1) It shall be lawful for Her Majesty the Queen in Council by Order to make rules as to the practice and procedure (including fees and costs) to be observed in and the returns to be made from Colonial Courts of Admiralty and Vice-Admiralty Courts in the exercise of their jurisdiction in

matters relating to the slave trade, and in and from East African Courts as defined by the Slave Trade (East African Courts) Acts, 1873 and 1879.

Secs. 14, 15.

36 & 37 Viet.
c. 59.
43 & 43 Viet.
c. 38.

(2) Except when inconsistent with such Order in Council, the rules of court for the time being in force in a Colonial Court of Admiralty or Vice-Admiralty Court shall, so far as applicable, extend to proceedings in such court in matters relating to the slave trade.

(3) The provisions of this Act with respect to appeals to Her Majesty in Council, from courts in British possessions in the exercise of the jurisdiction conferred by this Act, shall apply, with the necessary modifications, to appeals from judgments of any East African court made or purporting to be made in exercise of the jurisdiction under the Slave Trade (East African Courts) Acts, 1873 and 1879.

14. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes authorized by this Act, and to revoke and vary such Orders; and every such Order while in operation shall have effect as if it were part of this Act.

Orders in Council.

15. In the construction of this Act, unless the context otherwise requires,—

Interpretation

The expression "representative legislature" means, in relation to a British possession, a legislature comprising a legislative body of which at least one-half are elected by inhabitants of the British possession.

The expression "unlimited civil jurisdiction" means civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered.

The expression "judgment" includes a decree, order and sentence.

The expression "appeal" means any appeal, rehearing, or review; and the expression "local appeal"

Sec. 16.

means an appeal to any court inferior to Her Majesty in Council.

The expression "Colonial law" means any Act, ordinance or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for such possession.

Commence-
ment of Act.

16. (1) This Act shall, save as otherwise in this Act provided, come into force in every British possession on the first day of July, one thousand eight hundred and ninety-one.

Provided that—

(a) This Act shall not come into force in any of the British possessions named in the First Schedule to this Act until Her Majesty so directs by Order in Council, and until the day named in that behalf in such Order; and—

(b) If before any day above mentioned rules of court for the Colonial Court of Admiralty in any British possession have been approved by Her Majesty in Council, this Act may be proclaimed in that possession by the Governor thereof, and on such proclamation shall come into force on the day named in the proclamation.

(2) The day upon which this Act comes into force in any British possession shall, as regards that British possession, be deemed to be the commencement of this Act.

26 & 27 Vict.
c. 24.

(3) If, on the commencement of this Act in any British possession, rules of court have not been approved by Her Majesty in pursuance of this Act, the rules in force at such commencement under the Vice-Admiralty Courts Act, 1868, and in India the rules in force at such commencement regulating the respective Vice-Admiralty Courts or Courts of Admiralty in India, including any rules made

Sec. 17.

with reference to proceedings instituted on behalf of Her Majesty's ships, shall, so far as applicable, have effect in the Colonial Court or Courts of Admiralty of such possession, and in any Vice-Admiralty Court established under this Act in that possession, as rules of court under this Act, and may be revoked and varied accordingly; and all fees payable under such rules may be taken in such manner as the Colonial Court may direct, so, however, that the amount of each such fee shall, so nearly as practicable, be paid to the same officer or person who but for the passing of this Act would have been entitled to receive the same in respect of like business. So far as any such rules are inapplicable or do not extend, the rules of court for the exercise by a court of its ordinary civil jurisdiction shall have effect as rules for the exercise by the same court of the jurisdiction conferred by this Act.

(4) At any time after the passing of this Act any Colonial law may be passed, and any Vice-Admiralty Court may be established and jurisdiction vested in such court, but any such law, establishment, or vesting shall not come into effect until the commencement of this Act.

17. On the commencement of this Act in any British possession, but subject to the provisions of this Act, every Vice-Admiralty Court in that possession shall be abolished; subject as follows :—

Abolition of
Vice-Admi-
ralty Courts.

- (1) All judgments of such Vice-Admiralty Court shall be executed and may be appealed from in like manner as if this Act had not passed, and all appeals from any Vice-Admiralty Court pending at the commencement of this Act shall be heard and determined, and the judgment thereon executed as nearly as may be in like manner as if this Act had not passed :
- (2) All proceedings pending in the Vice-Admiralty Court in any British possession at the commencement of this Act shall, notwithstanding the repeal of any enactment by this Act, be continued in a

Sec. 18.

Colonial Court of Admiralty of the possession in manner directed by rules of court, and, so far as no such rule extends, in like manner, as nearly as may be, as if they had been originally begun in such court :

- (3) Where any person holding an office, whether that of judge, registrar or marshal, or any other office in any such Vice-Admiralty Court in a British possession, suffers any pecuniary loss in consequence of the abolition of such court, the Government of the British possession, on complaint of such person, shall provide that such person shall receive reasonable compensation (by way of an increase of salary or a capital sum, or otherwise) in respect of his loss, subject, nevertheless, to the performance, if required by the said Government, of the like duties as before such abolition :
- (4) All books, papers, documents, office furniture and other things at the commencement of this Act belonging or appertaining to any Vice-Admiralty Court, shall be delivered over to the proper officer of the Colonial Court of Admiralty or be otherwise dealt with in such manner as, subject to any directions from Her Majesty, the Governor may direct :
- (5) Where, at the commencement of this Act in a British possession, any person holds a commission to act as advocate in any Vice-Admiralty Court abolished by this Act, either for Her Majesty or for the Admiralty, such commission shall be of the same avail in every court of the same British possession exercising jurisdiction under this Act, as if such court were the court mentioned or referred to in such commission.

Repeal.

18. The Acts specified in the Second Schedule to this Act shall, to the extent mentioned in the third column of that schedule, be repealed as respects any British posses-

The Colonial Courts Act.

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sion as from the commencement of this Act in that possession, and as respects any courts out of Her Majesty's dominions as from the date of any Order applying this Act: Sec. 18.

Provided that—

- (a) Any appeal against a judgment made before the commencement of this Act may be brought and any such appeal and any proceedings or appeals pending at the commencement of this Act may be carried on and completed and carried into effect as if such repeal had not been enacted; and—
- (b) All enactments and rules at the passing of this Act in force touching the practice, procedure, fees, costs and returns in matters relating to the slave trade in Vice-Admiralty Courts and in East African Courts shall have effect as rules made in pursuance of this Act, and shall apply to Colonial Courts of Admiralty, and may be altered and revoked accordingly.

SCHEDULES.

FIRST SCHEDULE.

Section 16.]

BRITISH POSSESSIONS IN WHICH OPERATION OF ACT
IS DELAYED.

New South Wales.
St. Helena.

Victoria.
British Honduras.

SECOND SCHEDULE.

Section 17.]

ENACTMENTS REPEALED.

| Session and Chapter. | Title of Act. | Extent of Repeal. |
|---------------------------|---|--|
| 26 Geo. 3, c. 82..... | An Act to render valid the judicial Acts of Surrogates of Vice-Admiralty Courts abroad, during vacancies in office of Judges of such courts. | The whole Act. |
| 2 & 3 Will. 4, c. 51..... | An Act to regulate the practice and the fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their jurisdiction. | The whole Act. |
| 3 & 4 Will. 4, c. 41..... | An Act for the better administration of justice in His Majesty's Privy Council. | Section two. |
| 6 & 7 Vict. c. 38..... | An Act to make further regulations for facilitating the hearing appeals and other matters by the Judicial Committee of the Privy Council. | In section two, the words "or from any Admiralty or Vice-Admiralty Court," and the words "or the Lords Commissioners of Appeals in prize causes or their surrogates," In section three, the words "and the High Court of Admiralty of England," and the words "and from any Admiralty or Vice-Admiralty Court." In section five, from the first "the High Court of Admiralty" to the end of the section. In section seven, the words "and from Admiralty or Vice-Admiralty Courts." Sections nine and ten, so far as relates to maritime causes. In section twelve, the words "or maritime." In section fifteen, the words "and Admiralty and Vice-Admiralty." In section twelve, the words "and from Admiralty and Vice-Admiralty Courts," and so much of the rest of the section as relates to maritime causes. |
| 7 & 8 Vict. c. 63..... | An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intitled: "An Act for the better administration of justice in His Majesty's Privy Council," and to extend its jurisdiction and powers. | |
| 26 Vict. c. 24..... | The Vice-Admiralty Courts Act, 1863. | The whole Act. |
| 30 & 31 Vict. c. 46..... | The Vice-Admiralty Courts Act Amendment Act, 1867. | The whole Act. |
| 36 & 37 Vict. c. 59..... | The Slave Trade (East African Courts) Act, 1873. | Sections four and five. |
| 36 & 37 Vict. c. 88..... | The Slave Trade Act, 1873..... | Section twenty as far as relates to the taxation of any costs, charges and expenses which can be taxed in pursuance of this Act. In section twenty-three, the words "under the Vice-Admiralty Courts Act, 1863." |
| 38 & 39 Vict. c. 51..... | The Pacific Islanders Protection Act, 1875. | So much of section six as authorizes Her Majesty to confer Admiralty jurisdiction on any court. |

PART II.

SECTIONS OF 3 & 4 VICT., (1840), CAP. 65 (IMP.) RE-3 & 4 V. c. 65.
LATING TO JURISDICTION. Secs. 3, 4, 6.

3. And be it enacted, that after the passing of this Act, Whenever a vessel shall be arrested or proceeds brought into registry the Court to have jurisdiction over claims of mortgagees. whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or cause of action respectively.

4. And be it enacted, that the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages or bottomry, which shall be instituted in the said Court after the passing of this Act. Court to decide questions of title in all causes of possession, salvage, etc.

6. And be it enacted, that the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for necessities supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessities furnished, in respect of which such claim is made. The Court in certain cases, may adjudicate on claims for services and necessities, although not on the high seas.

Sec. 11.Power to direct
issue.

11. And be it enacted that in any contested suit depending in the said Court of Admiralty the said Court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such suit, and that the substance and form of such issue or issues shall be specified by the Judge of the said Court at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the Judge of the said Court to settle the same; and such trial shall be had before some Judge of her Majesty's Superior Courts of Common Law at Westminster, at the sittings at *nisi prius* in London or Middlesex, or before some Judge of assize at *nisi prius*, as to the said Court shall seem fit.

Secs. 1, 2.24 Vict. c. 10,
A.D. 1861
secs. 1, 2.**THE ADMIRALTY COURTS ACT, 1861, (Imp.).**

24 VICT. CAP. 10.

An Act to extend the jurisdiction and improve the practice of the High Court of Admiralty.

Whereas it is expedient to extend the jurisdiction and improve the practice of the High Court of Admiralty of England: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lord's spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same as follows:

Short Title.

1. This Act may be cited for all purposes as "The Admiralty Court Act, 1861."

**Interpretation
of terms.**

2. In the interpretation and for the purpose of this Act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them; that is to say:

"Ship" shall include any description of vessel used in navigation not propelled by oars; "cause" shall include any cause, suit, action, or other proceeding in the Court of Admiralty.

Secs. 3-7.

3. This Act shall come into operation on the first day of June, one thousand eight hundred and sixty-one. Commencement of Act.

4. The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or proceeds thereof are under arrest of the court. As to claims for building, equipping or repairing of ships.

5. The High Court of Admiralty shall have jurisdiction over any claim for necessities supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the court that at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales: Provided always, that if in any such cause the plaintiff do not recover twenty pounds, he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court. As to claims for necessities.

6. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown to the satisfaction of the court that at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales: Provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court. As to claims for damage to cargo imported.

7. The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship. As to claims for damage by any ship.

Secs. 8-12.

High Court of Admiralty to decide questions as to ownership, etc. of ships.

8. The High Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners or any of them touching the ownership, possession, employment and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof to be sold, and may make such order in the premises as to it shall seem fit.

Extending 17 & 18 Vict. c. 104, as to claims for salvage of life.

9. All the provisions of "The Merchant Shipping Act, 1854" in regard to salvage of life from any ship or boat within the limits of the United Kingdom shall be extended to the salvage of life from any British ship or boat wheresoever the services may have been rendered, and from any foreign ship or boat where the services have been rendered either wholly or in part in British waters.

As to claims for wages and for disbursements by master of a ship.

10. The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship and for disbursements made by him on account of the ship, provided always that if in any such cause the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court.

3 & 4 Vict. c. 65, in regard to mortgages extended to Court of Admiralty.

11. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854," whether the ship or the proceeds thereof be under arrest of the said court or not.

Sections 62 to 65 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

12. The High Court of Admiralty shall have the same powers over any British ship or any share therein, as are conferred upon the High Court of Chancery in England by the sixty-second, sixty-third, sixty-fourth and sixty-fifth sections of "The Merchant Shipping Act, 1854."

13. Whenever any ship or vessel, or the proceeds thereof Secs. 13-16.
are under arrest of the High Court of Admiralty, the said Part 9 of 17 &
court shall have the same powers as are conferred upon 18 V. c. 104,
the High Court of Chancery in England by the ninth part extended to
of "The Merchant Shipping Act, 1854." Court of
Admiralty.

14. The High Court of Admiralty shall be a Court of Court to be a
Record for all intents and purposes. Court of
Record.

15. All decrees and orders of the High Court of Admir- Decrees and
alty whereby any sum of money or any costs, charges, or orders of Court
expenses shall be payable to any person, shall have the of Admiralty
same effects as judgments in the Superior Courts of to have effect
Common Law, and the persons to whom any such moneys, of judgments
or costs, charges, or expenses, shall be payable, shall be at common
deemed judgment creditors, and all powers of enforcing law.
judgments possessed by Superior Courts of Common Law,
or any judge thereof, with respect to matters depending
in the same courts as well against the ships and goods
arrested as against the person of the judgment debtor,
shall be possessed by the said Court of Admiralty with
respect to matters therein depending; and all remedies
at common law possessed by judgment creditors shall be
in like manner possessed by persons to whom any moneys,
costs, charges, or expenses are by such orders or decrees
of the said Court of Admiralty directed to be paid.

16. If any claim shall be made to any goods or chattels As to claims
taken in execution under any process of the High Court of to goods taken
Admiralty, or in respect of the seizure thereof, or any Act in execution.
or matter connected therewith, or in respect of the pro-
ceeds or value of any such goods or chattels, by any land-
lord for rent, or by any person not being the party against
whom the process has issued, the registrar of the said
court may, upon application of the officer charged with the
execution of the process, whether before or after any action
brought against such officer, issue a summons calling
before the said court both the party issuing such process
and the party making the claim, and thereupon any action
which shall have been brought in any of Her Majesty's

Secs. 17, 18. Superior Courts of Record, or in any local or inferior court, in respect of such claim, seizure, act or matter as aforesaid, shall be stayed, and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Admiralty Court, and the judge of the said Admiralty Court shall adjudicate upon the claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in the said court. Where any such claim shall be made as aforesaid the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in the case of dispute, to be by the officer paid into court to abide the decision of the judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained, and in default of the claimant so doing, the officer may sell the goods as if no such claim had been made, and shall pay into the court the proceeds of the sale, to abide the decision of the judge.

Powers of
Superior
Courts extend-
ed to Court of
Admiralty.

17. The judge of the High Court of Admiralty shall have all such powers as are possessed by any of the Superior Courts of Common Law or any judge thereof to compel either party in any cause or matter to answer interrogatories, and to enforce the production, inspection, and delivery of copies of any document in his possession or power.

Party in Court
of Admiralty
may apply for
order for in-
spection by
Trinity
Masters.

18. Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said court for an order for the inspection by the Trinity masters or others appointed for the trial of the said cause, or by the party himself, or by his witnesses, of any ship or other personal

or real property, the inspection of which may be material to the issue of the cause, and the court may make such order in respect of the costs arising thereout as to it shall seem fit. Secs. 19-23.

19. Any party in a cause in the High Court of Admiralty may call any other party in the cause by notice in writing to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the cost of proving the document shall be paid by the party so neglecting or refusing, whatever the results of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable. Admission of documents.

20. Whenever it shall be made to appear to the judge of the High Court of Admiralty that reasonable efforts have been made to effect personal service of any citation, monition, or other process issued under seal of the said court, and either that the same has come to knowledge of the party thereby cited or monished, or that he wilfully evades service of the same, and has not appeared thereto, the said judge may order that the party on whose behalf the citation, monition, or other process was issued, be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge may seem fit, and all proceedings thereon shall be as effectual as if personal service of such citation, monition or other process had been effected. Power to Court of Admiralty when personal service of citation has not been effected to order parties to proceed.

21. The service in any part of Great Britain or Ireland of any writ of *subpœna ad testificandum* or *subpœna duces tecum* issued under seal of the High Court of Admiralty shall be as effectual as if the same had been served in England or Wales. As to service of subpœna out of England and Wales.

22. Any new writ or other process necessary or expedient for giving effect to any of the provisions of this Act may be issued from the High Court of Admiralty in such form as the judge of the said court shall from time to time direct. Power to issue new writs or other process.

23. All the powers possessed by any of the Superior Courts of Common Law or any judge thereof, under the Common Law Procedure Act, 1854, and otherwise, with Judge and registrar to have same power as to arbitrations as

Secs. 24-28. regard to references to arbitrations, proceedings thereon and the enforcing of awards of arbitrators, shall be possessed by the judge of the High Court of Admiralty in all causes and matters depending in the said court, and the registrar of the said Court of Admiralty shall possess as to such matters the same powers as are possessed by the masters of the said Superior Courts of Common Law in relation thereto.

judges and
masters of
common law.

24. The registrar of the High Court of Admiralty shall have the same powers under the fifteenth section of the Merchant Shipping Act, 1854, as are by the said section conferred on the masters of Her Majesty's Court of Queen's Bench in England and Ireland.

Powers of
registrar and
of deputy or
assistant
registrar.

25. The registrar of the High Court of Admiralty may exercise, with reference to causes and matters in the said court, the same powers as any surrogate of the judge of the said court sitting in chambers might or could have heretofore lawfully exercised; and all powers and authorities by this or any other Act conferred upon or vested in the registrar of the said High Court of Admiralty may be exercised by any deputy or assistant registrar of the said court.

False oath or
affirmation
deemed per-
jury.

26. The registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said Court, and any person who shall wilfully depose or affirm falsely in any proceedings before the registrar or before any deputy or assistant registrar of the said Court, or before any person authorized to administer oaths in the said Court, shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

Appointment
of registrar
and of deputy
or assistant
registrar.

27. Any advocate, barrister-at-law, proctor, attorney, or solicitor of ten years' standing, may be appointed registrar or assistant or deputy registrar of the said Court.

Appointment
of examiners.

28. Any advocate, barrister-at-law, proctor, attorney, or solicitor may be appointed an examiner of the High Court of Admiralty.

29. Any person who shall have paid on his admission in any Court as a proctor, solicitor, or attorney the full stamp duty of twenty-five pounds, and who has been or shall hereafter be admitted a proctor, solicitor, or attorney (if in other respects entitled to be so admitted) shall be liable to no further stamp duty in respect of such subsequent admission.

Secs. 29-33.

Stamp duty not payable on subsequent admissions of proctors or solicitors.

30. Any proctor of the High Court of Admiralty may act as agent of any attorney or solicitor, and allow him to participate in the profits of and incident to any cause or matter depending in or connected with the said Court; and nothing contained in the Act in the fifty-fifth year of the reign of King George the Third, chapter one hundred and sixty, shall be construed to extend to prevent any proctor from so doing, or to render him liable to any penalty in respect thereof.

Proctor may act as agent of solicitor.

31. The Act passed in the second year of the reign of King Henry the Fourth, intituled, "A Remedy for Him who is Wrongfully Pursued in the Court of Admiralty," is hereby repealed."

2 Henry IV. c. 11, repealed.

32. Any party aggrieved by any order or decree of the judge of the said Court of Admiralty, whether made *ex parte* or otherwise, may, with the permission of the judge, appeal therefrom to her Majesty in Council, as fully and effectually as from any final decree or sentence of the said Court.

Power of appeal in interlocutory matters

33. In any cause in the High Court of Admiralty, bail may be taken to answer the judgment as well of the said Court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has been given; and in any appeal from any decree or order of the High Court of Admiralty, the Court of Appeal may make and enforce its order against the surety or sureties who may have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal.

Bail given in the Court of Admiralty good in the Court of Appeal.

Secs. 34, 35.

As to the hearing of causes and cross causes.

34. The High Court of Admiralty may on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested, or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the principal cause until security has been given to answer judgment in the cross cause.

Jurisdiction of the Court.

35. The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings *in rem* or by proceedings *in personam*.

M. S. Act, 1854.
Sec. 62.

THE FOLLOWING ARE THE SECTIONS OF THE MERCHANT SHIPPING ACT 1854 REFERRED TO IN SECTION 12 OF THE PRECEDING ACT.

Unqualified owner entitled by transmission may apply to Court for sale of ship.

62. Whenever any property in a ship or share in a ship becomes vested by transmission on the death of any owner or on the marriage of any female owner, in any person not qualified to be the owner of British ships, it shall be lawful, if such ship is registered in England or Ireland for the Court of Chancery, or the Court of Admiralty, if in Scotland for the Court of Session, or if in any British possession for any court possessing the principal civil jurisdiction within such possession, upon an application made by or on behalf of such unqualified person, to order a sale to be made of the property so transmitted, and to direct the proceeds of such sale, after deducting the expenses thereof, to be paid

to the person entitled under such transmission, or otherwise as the court may direct, and it shall be in the discretion of any such court as aforesaid to make or refuse any such order for sale, and to annex thereto any terms or conditions, and to require any evidence in support of such application it may think fit, and generally to act in the premises in such manner as the justice of the case requires.

Secs. 63-65.

63. Every order for a sale made by such court as aforesaid shall contain a declaration vesting the right to transfer the ship or share so to be sold in some person or persons named by the Court, and such nominee or nominees shall thereupon be entitled to transfer such ship or share in the same manner, and to the same extent, as if he or they were the registered owner or owners of the same; and every registrar shall obey the requisition of such nominee or nominees as aforesaid in respect of any transfer to the same extent as he would be compellable to obey the requisition of any registered owner or owners of such ship or share.

Order to be made by Court.

64. Every such application as aforesaid for sale shall be made within four weeks after the occurrence of the event on which such transmission has taken place, or within such further time as such Court as aforesaid may allow, such time not in any case to exceed the space of one year from the date of such occurrence as aforesaid, and in the event of no such application being made within such period as aforesaid, or of such Court refusing to accede thereto, the ship or share so transmitted shall thereupon be forfeited in manner hereinafter directed (*u*) with respects to interests acquired by unqualified owners in ships using a British flag and assuming the British character.

Limit of time for applications.

65. It shall be lawful in England or Ireland for the Court of Chancery, or the Court of Admiralty, in Scotland for the Court of Session, in any British possession for any Court possessing the principal civil jurisdiction within

Power of Courts to prohibit transfers.

(*u*) That is in secs. 103 to 106, M. S. A. 1854.

Sec. 65. such possession, without prejudice to the exercise of any other power such Court may possess, upon the summary application of any interested person made either by petition or otherwise, and either *ex parte* or upon service of notice on any other person, as the Court may direct, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share; and it shall be in the discretion of such Court to make or refuse any such order and to annex thereto any terms or conditions it may think fit, and to discharge such order when granted with or without costs, and generally to act in the premises in such manner as the justice of the case requires; and every registrar, without being made a party to the proceedings upon being served with such order, or an official copy thereof, shall obey the same.

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PART III.
EXCHEQUER COURT.

ADMIRALTY JURISDICTION.

1. JURISDICTION GENERALLY.
2. SALVAGE, INCLUDING ARRANGEMENTS BETWEEN CANADA AND UNITED STATES FOR RECIPROCAL WRECKING PRIVILEGES.
3. DAMAGE—REGULATIONS FOR PREVENTING COLLISIONS —LIMITATION OF LIABILITY.
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5. SEAMEN'S WAGES, AND WAGES AND DISBURSEMENTS OF MASTERS.
6. OWNERSHIP—POSSESSION AND RESTRAINT.
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11. ACCOUNTS.
12. CHARTER-PARTIES — GENERAL AVERAGE, FREIGHT, DEMURRAGE.
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14. SALES BY MARSHAL.

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ADMIRALTY JURISDICTION.

JURISDICTION GENERALLY.

The Parliament of Canada in pursuance of the powers conferred upon it by "*The Colonial Courts of Admiralty Act, 1890*," 53-54 V. c. 27, s. 3, has declared—54-55 V. c. 29, *ante*, p. 1—the Exchequer Court of Canada to be a Colonial Court of Admiralty, and that as a Court of Admiralty it shall within Canada have and exercise all the jurisdiction powers and authority conferred by the said Act, *i. e.*, by the "*Colonial Courts of Admiralty Act*," and by the Act then being enacted. Section 2, s-s. 2, of the first-named Act provides that:—

"The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations."

By the "*Judicature Act, 1873*," (Imp.) all jurisdiction which at the commencement of the Act was vested in or capable of being exercised by the High Court of Admiralty was transferred to and vested in the High Court of Justice, and has since been exercised by that court in the Probate, Divorce and Admiralty Division, usually called, when Admiralty cases are referred to, the Admiralty Division (*a*). And certain questions there turn upon the fact that it is a part of the High Court of Justice, *e. gr.*, that in the absence of special circumstances, costs follow the event (*b*); also

(*a*) Wms. & B. 19.

(*b*) *The Monkman*, 14 P. D. 51.

the transferring of actions to it from the other Divisions, *e.gr.*, an action for personal injury in a collision between ships begun in the Queen's Bench and transferred to the Admiralty Division (*c*). The jurisdiction of the Admiralty Division is the same as that formerly exercised by the High Court of Admiralty in matters in which it had jurisdiction by the comity of nations as a Court administering civil law; and with respect to the execution of the sentences of foreign Admiralty Courts (*d*).

The jurisdiction clause of the Canadian Act, s. 4, which is at once concise, and comprehensive, conferring jurisdiction over the waters of Canada, "whether tidal or non-tidal and whether naturally navigable or artificially made so," is as follows:—

"Such jurisdiction, powers and authority shall be exercisable and exercised by the Exchequer Court throughout Canada, and the waters thereof, whether tidal or non-tidal, or naturally navigable or artificially made so, and all persons shall, as well in such parts of Canada as have heretofore been beyond the reach of the process of any Vice-Admiralty Court, as elsewhere therein, have all rights and remedies in all matters, (including cases of contract and tort and proceedings *in rem* and *in personam*), arising out of or connected with navigation, shipping, trade or commerce, which may be had or enforced in any Colonial Court of Admiralty under "*The Colonial Courts of Admiralty Act, 1890*."

The process of the Exchequer Court runs throughout Canada. 50-51 V. c. 16, s. 42.

The expression—"Colonial Court of Admiralty"—is to be read into Imperial and Canadian enactments referring to Vice-Admiralty Courts or substituted for the expression "Vice-Admiralty Court" or other expression respectively referring to such Vice-Admiralty Courts or the judge thereof; and the Colonial Court of Admiralty, or, so far as Canada is concerned,—the Exchequer Court of Canada, which within Canada has unlimited civil jurisdiction

(c) *Hawkins v. Morgan*, 49 L. J. Q. B. 618 (1880).

(d) *The City of Mecca*, 4 Asp. 187.

within the meaning of the Act,—is to have jurisdiction accordingly (e).

"Canada," as the name of a British possession within the meaning of the Act, is to be read into Imperial enactments which refer to the Admiralty jurisdiction of the High Court in England, as if such name were therein substituted for "England and Wales." (f) And the Exchequer Court of Canada as a Court of Admiralty, is by virtue of the *C. C. A. Act*, s. 2, authorized to exercise all the powers which it possesses for the purposes of its other civil jurisdiction.

The jurisdiction of the High Court (Eng.) in Admiralty, is now, in most of the cases in which it is exercised, clearly defined by statute, and when that court has jurisdiction whether by statute or by virtue of its former original jurisdiction over the subject matter of an action, it has also jurisdiction over all consequential questions, though properly determinable at common law: *The case of the Admiralty*, 13 Rep. 53; *Ridley v. Eggesfield*, 2 Lev. 25; *The Catharine*, 12 Jur. 682; *Davidson v. Sealskins*, 2 Paine (Am.) 324.

The matters over which the jurisdiction of the Exchequer Court of Canada, in Admiralty, constituted as above described and by virtue of the *C. C. A. Act*, 1890, and the *Admiralty Act*, 1891, extends are for the most part contained and set forth in certain Imperial and Dominion Statutes, and will now be referred to.

Vice-Admiralty Courts are expressly named in various statutes of Canada, and jurisdiction given to them and duties cast upon them by those statutes. Such statutes are to be read as if the expression "Colonial Court of Admiralty," were therein substituted for "Vice-Admiralty Court:" *C. C. A. Act*, s. 2, s-s. 3. The principal statutes are as follows:—

"*The Customs Act*," R. S. C. c. 32, which provides that all vessels with the guns, tackle, apparel and furniture

(e) 53-54 Vic. (Imp.) c. 27, s. 2 (3).

(f) *Ibid.* sec. 2, s-s. 3.

thereof, as well as other property mentioned, made use of in the importation or unshipping or landing or removal of any goods liable to forfeiture under the Act are to be seized and forfeited, sec. 196. And all penalties and forfeitures incurred under the Act or any other law relating to the customs, or to trade or navigation, may, in addition to any other remedy provided by the Act or by law, be prosecuted, sued for and recovered, with full costs of suit, in the Exchequer Court of Canada, or in any Superior Court or Court of Vice-Admiralty, having jurisdiction in that Province in Canada where the cause of prosecution arises, or wherein the defendant is served with process. Sec. 222.

The court also has jurisdiction under "*The Act respecting the safety of ships and the prevention of accidents on board thereof*," R. S. C. c. 77 ;—and amendments,—to entertain an appeal by owners who consider themselves aggrieved by a finding of the surveyor that their ship is unseaworthy.

Penalties and forfeitures incurred under "*The Act respecting the Coasting Trade of Canada*," may be recovered and enforced in the manner provided by the Customs Act above referred to (g).

The Act respecting fishing by foreign vessels, R. S. C. c. 94, and "*The Treaty of Washington Act, 1888*," regarding fishing vessels in the harbors on the Atlantic coast of Canada, provide that penalties and forfeitures thereunder may be recovered and enforced in any Court of Vice-Admiralty within Canada ; with provisions for further proceedings before the judge of such court as to ships or goods seized, and as to their release or condemnation and sale ; and by s. 20 of the first named Act, it is to apply also to the inland waters and to courts substituted for Vice-Admiralty Courts.

Wreck, including *flotsam*, *jetsam* and *ligan*, under "*The Merchants Shipping Act, 1854-1862*," in England, is under the general supervision of the Board of Trade, London : Boyd's M. S. Laws, 368, *et seq.* In Canada those matters are subject to "*The Act respecting wrecks, casualties and salvage*." R. S. C. c. 81, and to 55-56 V. c. 17, consti-

(a) R. S. C. c. 83, s. 4.

tuting "The Department of Marine and Fisheries," and providing *inter alia*, that inquiries into causes of shipwrecks and casualties are to be under the control of the Minister of Marine and Fisheries. See also 56 V. c. 23, amending the first named Act.

The duties and powers conferred on Vice-Admiralty judges by "The Merchant Shipping Act," *e.gr.*, as to salvage by Her Majesty's ships will now, it would seem by virtue of the late Act (C. C. Ad. Act, 190), be exercised by the judge and local judges of the Exchequer Court of Canada.

Flag, National Character.—Any court having admiralty jurisdiction in Her Majesty's Dominions, may adjudicate on cases of vessels unduly assuming British character, or using the British flag, under "The Merchants Shipping Act, 1854, 1876," ss. 103, 105; and "an Act to amend the Law relating to the Use of Flags in the British Merchant Service" (*h*).

Territorial Jurisdiction.—The expression: "The territorial waters of Her Majesty's dominions," in reference to the sea is defined to mean "such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the sovereignty of Her Majesty;" and for the purpose of any offence declared by that Act to be within the jurisdiction of the Admiral, any part of the open sea within *one marine league* of the coast measured from low water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions: "The Territorial Waters Jurisdiction Act, 1878, (Imp.); see also the Treaty of Washington Act, 1888, Can..

Where a court in a British possession exercises in respect of matters arising outside the body of a county or other like part of a British possession any jurisdiction exercisable under the Colonial Courts of Admiralty Act, that jurisdiction shall be deemed to be exercised under that Act and not otherwise: C. C. A. Act, s. 2, s-s. 4.

(*h*) 52-53 V. (Imp.) c. 73; Stats. Can. 1890, xxi.

The common law jurisdiction of the Admiralty courts extended over British subjects and persons on board British ships everywhere: *R. v. Anderson*, L. R. 1 Cr. C. 161; and over foreigners on board foreign ships only when they were in British territorial waters: *R. v. Keyn*, 2 Exch. D. 63; and when such ships are private ships: Woolsey's Intl. Law (Am.) s. 54.

By international law the territory of a state includes the coast-sea to the distance of a marine league: *Woolsey (Am.) Intl. Law, 6th Ed., s. 6*; or cannon shot from the coast: *Twiss on Law of Nations*, (1884) 292; *Vattel's Law of Nations*, by Chitty, [129]. And by the same law the proprietary rights of co-terminous states extend in the cases of navigable rivers and lakes to the middle of the channel, *ad medium filum aque*. (*Vattel*, [120] [123]). This principle is adopted in the treaties between United States and Great Britain, and in the decisions of Commissioners defining boundaries between the United States and British North America of 1783, 1822, 1842-6, 1873.

The waters on the British side of the line running through the middle of the rivers and lakes between the United States and British North America as fixed by treaties constitute a part of British territory as much as the land (*i*).

SALVAGE.

Salvage of Life.—Salvage may be awarded by the Admiralty Division for the saving of life from any British ship or boat wheresoever the services are rendered, or from any foreign ship or boat where the services have been rendered either wholly or in part in British waters (*j*).

The provision of Canadian statute law as to salvage of life is as follows: "When services are rendered within the limits of Canada in saving life from any vessel, there shall be payable to the salvor by the owner of the vessel, freight, cargo, stores and tackle, a reasonable sum for salvage and expenses, in priority to all other claims for

(i) *The People v. Tyler*, 3 Cooley, Mich. Supreme Ct. Rep. 234, 284.

(j) 24 V. (Imp.) c. 10, s. 9, *ante*, p. 196; and 17 & 18 V. (Imp.) c. 104, s. 458.

salvage; and in cases in which such vessel, stores, tackle and cargo are destroyed, or the value thereof with the freight, if any, is insufficient, after payment of the actual expenses incurred to pay the amount of such salvage, the Minister" (i. e., the Minister of Marine and Fisheries) "may, in his discretion, award to the salvor, out of any funds at his disposal for that purpose, such remuneration as he thinks fit" (k).

Under the provisions of *The Wreck and Salvage Act*, 8 & 9 V. (Imp.) c. 99, now embodied in the *M. S. Act*, ss. 458, 459, the court was empowered to award remuneration for the salvage of life (l).

The words, "the lives of the persons belonging to such ship or boat" in s. 459 include passengers who may be on board (m); and the section provides that it, life salvage, shall be paid by the owners of the ship or boat in priority to all other claims for salvage. Before this enactment no reward could be given for saving life alone (n).

The court is inclined to regard with peculiar favour the claims of persons who have saved life (o).

The provisions of s. 458, *M. S. Act*, 1854, and s. 9, *A. C. C. Act*, 1861, only apply to services rendered to foreign ships, wholly or in part in British waters. And it was held that the court had no power to award salvage for life, only, for services rendered to a foreign ship out of British jurisdiction, except by virtue of treaty arrangements between such foreign country and Great Britain (p).

Provision is made in the *M. S. Act* concerning salvage of life from foreign ships as follows:

"Whenever it is made to appear to her Majesty that the government of any foreign country is willing that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country when such ship is beyond the limits of British

(k) R. S. C. c. 81, s. 42.

(l) *Silver Bullion*, 2 Spk. 70.

(m) *The Fusilier*, 34 L. J. Ad. 25.

(n) *The Coromandel*, Sw. 207.

(o) Wms. & B. 146.

(p) *The Johannes*, Lush. 182; *The Willem III.*, 3 A. & E. 457.

jurisdiction, her Majesty may, by order in council, direct that the provisions of the Principal Act and of this Act, with respect to salvage for services rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not;" (q) the "Principal Act" being the *M. S. Act, 1854*.

Salvage reward for saving life can only be awarded by the court against owners where ship, cargo, or freight is saved, thereby providing a fund out of which the award may be paid (r). Hence the provision in the Dominion, as well as in the Imperial Act, for cases in which the vessel is destroyed, or the value is insufficient, that the Minister of Marine in the one case, and the Board of Trade (London) in the other case, may award salvage remuneration in respect of lives so saved out of the funds in the Acts mentioned (s).

Although it is part of the duty of coast guard men to save life, it is a duty for which they should be paid (t).

Salvage of Property.—The Canadian *Wreck and Salvage Act*, contains the following provision:—"Where within the limits of Canada any vessel is wrecked, abandoned, stranded, or in distress, and services are rendered by any person in assisting such vessel, and when services are rendered as aforesaid by any person in saving any wreck, there shall be payable to the salvor by the owner of such vessel or wreck, as the case may be, a reasonable amount of salvage, including expenses properly incurred" (u).

Wreck and salvage districts are established by Order in Council under s. 15 of the Act and receivers appointed in the various districts throughout Canada (v).

(q) 25 & 26 V. (Imp.) c. 63, s. 59.

(r) *The Annie*, 12 P. D. 50.

(s) *Ante*, p. 213.

(t) *The Silver Bullion*, 2 Sp^r 70.

(u) R. S. C. c. 81, s. 43.

(v) Ord. in Council of 12 June, 1889, and subsequent Orders in Council.

And disputes as to salvage, whether of life or property, may, under the conditions in that Act specified, be heard and determined by any court having jurisdiction in civil matters to the amount of the claim, or the value of the property liable in the place where the services were rendered, or where the property is at the time of the making of the claim.

There is also a provision in the Act (s. 44), that the claimant shall have no costs unless the court certifies that the suit or proceeding was unfit to be determined by the receiver. But as to the practice of the High Court (Eng.), regarding certifying for costs, *vide, ante*, p. 63. And the Act provides (s. 56), that nothing in the Act shall be construed to affect the jurisdiction of any Court of Vice-Admiralty in Canada.

The Exchequer Court in Admiralty, in addition to the jurisdiction which it has under that statute, has also jurisdiction "over the like places, persons, matters and things," as the Admiralty Division of the High Court in England (*w*).

That court has jurisdiction conferred upon it as to salvage by 3 & 4 V. c. 65, s. 6, and by *The Merchant Shipping Act*, ss. 458, *et seq.* Section 476 of the latter Act being as follows:—"Subject to the provisions of this Act, the High Court of Admiralty, shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land."

The Admiralty Division (Eng.) is enabled to entertain all actions of salvage, however small may be the value of the property saved, or the amount claimed by the salvors (*x*).

Useful services of any kind rendered to a vessel or her cargo in danger of loss or damage, may entitle those who

(*w*) *The C. C. A. Act*, s. 2, s-s. (2).

(*x*) *The Enpress*, L. R. 3 A. & E. 502.

render them to salvage reward. Persons bringing a derelict ship, or goods belonging to her, into port, raising a sunken ship, securing the wreck, or protecting the cargo of a stranded vessel by transshipping it, or removing it to a place of safety, may be entitled to salvage. So may persons who assist to tow or pilot a vessel in distress. The supplying of mariners to a ship without a crew competent to manage her, the furnishing of an anchor and chain in boisterous weather to a ship at sea which has slipped her anchor, the rescuing of a ship from the peril of impending collision, the assisting to extinguish a fire on board a ship, or the towing of a ship from a dock where she is in imminent danger of catching fire, are all acts which may constitute salvage services. Persons rescuing a ship from pirates or mutineers, or from insurgent slaves, or from plunder by savages on an inhospitable shore may be entitled to salvage: so may persons carrying an order from a ship in distress for assistance, conveying information of the position and danger of a vessel in want of assistance, or going near to a ship in danger and hailing her to adopt certain measures for her safety (y).

As a general rule a mere attempt to save lives or property, however meritorious, or whatever degree of risk or danger may have been incurred, if unsuccessful, furnishes no title to salvage reward (z). But persons may be entitled to a reward, *pro tanto*, for performing part of a salvage service, though others may complete it. A person who contributes in any way to a successful result is not to be deprived of reward simply because his efforts standing alone would have been unavailing (a).

The ingredients of a salvage service are, first, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow creatures, and to rescue the property of their fellow subjects; secondly, the degree of danger and distress from which the property is rescued; thirdly, the degree of

(y) Wms. & B. 115.

(z) *The Cheerful*, 12 P. D. 3.

(a) Wms. & B. 118.

labour and skill which the salvors incur and display, and the time occupied, and also the value of the property salvaged (*b*).

Another consideration is the value of any property by the use of which the services are rendered, and the danger to which it is exposed (*c*).

The property must have been in some peril (*d*).

The services must be voluntary (*e*); if they are part of the claimant's legal duty it is a general rule that he cannot claim salvage; *e. gr.* the crew of the salvaged ship, unless their services had ended, by an abandonment of the ship at sea (*f*); or by their discharge by the actual or implied order of the master (*g*).

Passengers, pilots, maritime officials, tugs engaged in towing, associated ships, charterers, ship's agents, and Queen's ships, with certain exceptions, fall under the general rule (*h*).

Where the commander and crew of a Queen's ship rendered services in saving the cargo of a disabled merchant ship, beyond the scope of their public duty, it was held that such services were salvage services and entitled them to remuneration (*i*).

Services begun under a towage contract may be superseded by a right to salvage (*j*).

The owner of a ship may claim for salvage services rendered to another ship owned by the person to whom he has let the salving ship on charter, unless the charter-party amounts to a demise of the ship. And where ships belong to the same person, and salvage services are rendered by one to the other, the master and crew of the

(*b*) *The Clifton*, 3 Hagg. 117, 120 MacLachlan's Mer. Shipping, 4th Ed. (1892), 653; *Boyd's M. S. Laws*, 379. *Marvin on Salvage* (Am.) s. 99.

(*c*) *Roscoe*, 15, and Official Instructions issued by the London Board of Trade, 1864.

(*d*) *The Mary*, 1 W. Rob. 457.

(*e*) *The Neptune*, 1 Hagg. 236.

(*f*) *The Florence*, 16 Jur. 572.

(*g*) *The Warrior*, Lush. 476; *The Le Joutet*, L. R. 3 Ad. 534.

(*h*) *Roscoe*, Ad. 12.

(*i*) *The Cargo ex Ulysses*, 13 P. D. 205.

(*j*) *Five Steel Barges*, 15 P. D. 142.

vessel rendering the services are entitled to recover for salvage remuneration, provided the services rendered are not within the scope of the duties they are bound by their contract of service to perform (*k*).

And even in cases where the assistance rendered has been in the nature of towage, and the services of the crew have been of the same character as their ordinary duties, and entailing little, if any, extra labour, some remuneration has been decreed (*l*).

The owners of a ship may claim salvage from the owners of cargo carried by them in another one of their ships (*m*).

The owners of steamships not infrequently receive half of the amount awarded for salvage (*n*).

In the case of *The Kenmare Castle* (*o*), out of £4,000 awarded the court gave £3,000 to the owners of the ship.

Where advantage is taken of a ship in distress to extort an inequitable agreement, the court has power to set it aside (*p*).

When a fair binding agreement for salvage is made between the masters of the salving and the salved vessels, the officers and crew ought not to bring an action (*q*).

Such an agreement entered into by the master is binding on the owners of the vessel without reduction on account of the cargo (*r*).

There is nothing to prevent persons who are under no legal obligation to render assistance, from bargaining or agreeing at the time they offer their services as salvors for a fixed and definite remuneration (*s*).

Where a vessel was aground on the north shore of Lake Superior in November, and the underwriters to whom she

(*k*) *The Sappho*, 3 P. C. 690.

(*l*) *Wms. & B.* 128-9.

(*m*) *The Glenfruin*, 10 P. D. 103; *The Cargo ex Laertes*, 12 P. D. 187.

(*n*) *Roscoe*, 2nd Ed. 31.

(*o*) 7 P. D. 47.

(*p*) *The Rialto*, 1891, P. 175.

(*q*) *The Nasmyth*, 10 P. D. 4.

(*r*) *The Prinz Heinrich*, 13 P. D. 31.

(*s*) *Wms. & B.* 171.

had been abandoned accepted by telegram an offer made by telegram made by salvors at Port Arthur to take the vessel off for a certain sum "or no pay," no time being named within which the contract was to be performed. The salvage services begun in December, suspended during the winter, and successfully completed in May following, were held to entitled the plaintiffs to an award for the amount agreed upon, and that the law governing salvage agreements made by masters had no application to such a contract.

In the same case the defendants set up, but failed to establish by proof, a usage of trade, as being an implied condition of the contract, that it was to be performed before winter fully set in (*t*).

Services rendered in pursuance of an express agreement cannot form the subject of a salvage claim unless the services were rendered to property which has been saved, if not by the exertions of those who rendered the services at least by some other means (*u*).

In a recent Canadian case where a ship had been stranded on a rocky shore with a point of rock protruding through her hull, H. was employed to blast it away and so free the ship; the court held that although this was not strictly a salvage service, yet it could award reasonable remuneration in respect of the same (*v*).

A sailing vessel after collision with a steamer becoming water-logged and helpless and in a position where, though safe for the moment, she might very shortly have been in great danger, it was held to be salvage service, and not mere towage, to rescue her; also, that where two vessels in collision are both in fault, salvage services performed by one to the other are to be divided (*w*).

There is no rule entitling salvors to any fixed proportion of the value of property saved (*x*), except in the case of Queen's ships becoming entitled to salvage; as to them

(*t*) *The Sir C. T. Van Stroubenzie*, 6 C. L. T. 35, (Mar. Ct. Ont. 1884).

(*u*) *The Renpor*, 8 P. D. 115, C. A.

(*v*) *The Costa Rica*, 3 E. C. R. 23; Vice-Adm. Court, Br. Columbia.

(*w*) *The Zambesi*, (Johnson); *The Fanny Dulard*, (Upton), 3 E. C. R. 67.

(*x*) *H. M. S. Thetis*, 3 Hagg. 48; *The Saladin*, 2 Hagg. 262.

s. 487, M. S. Act, fixes the maximum reward at one-half the value of the property saved.

In other cases a reward equal to one-half of such value after the expenses of the salvors have been deducted may be said to be the highest amount awarded (*y*), except in cases of the most extraordinary character (*z*).

Although it is considered to be sound policy to grant every encouragement to persons who render salvage services, and the court accordingly is inclined to act on liberal principles, it is not governed by feelings of mere blind generosity, but in each case endeavours to fix the amount of the reward according to the nature of the services rendered, the sacrifice incurred by the salvors, and the benefit conferred upon the owners of property saved (*a*).

"A reasonable amount of salvage" is the expression used in the statute (*b*); and the amount awarded, where the value is very great, must not be altogether out of proportion to the services actually rendered, if it should be, the appellate court has power to reduce or increase the amount. The Privy Council has reduced the amount awarded by the High Court of Admiralty by two-thirds (*c*).

The sum of £2,000 having been awarded by a Vice-Admiralty Court for salvage services rendered to a derelict valued at £32,000 the Privy Council increased the award to £3,000 (*d*).

In a late case where the value of the property saved was £3,750 the court awarded £2,000 as salvage (*e*).

The rate of compensation agreed upon as to one part of the work where the services are continuous and one part not more difficult or dangerous than the rest should be taken as a measure of compensation for the whole (*f*).

(*y*) Wms. & B. 146; *The Gleniffer*, 3 E. C. R. (Can.) 57.

(*z*) Wms. & B. 57.

(*a*) Wms. & B. 139.

(*b*) *Ante*, pp. 212, 214.

(*c*) *Compagnie Générale Transatlantique v. Owners of The Spray*, L. R. 6 P. C. 468.

(*d*) *The Scindia* 4 Moo. P. C. N. S. 84.

(*e*) *The Erato*, 12 P. D. 163.

(*f*) *Couette v. The Queen*, 3 E. C. R. (Can.) 82.

When both life and property are saved, the ship and cargo contribute according to their rateable values, but the cargo may be made to contribute when life alone has been saved (*g*).

An ignorant salvor receiving a sum utterly inadequate to the services performed, and signing a receipt in full of all demands was held entitled to relief in Admiralty, and not barred in his suit for fair and proper remuneration for his services (*h*).

Seaman cannot abandon their right to salvage, and agreements by them for that purpose are inoperative (*i*) except where, by a contract of service, they expressly engage themselves in a ship to be employed on salvage service in consideration of a fixed and equitable remuneration (*j*).

A power of attorney from the crew of a ship to A. to "bring suit or otherwise settle or adjust any claim which we may have for salvage services," etc., does not authorize the agent to receive the salvage payable to the crew or to release from their lien the ship on which salvage services had been performed. And payment to such agent and his receipt therefore is no bar to their maintaining action for their services (*k*).

Where a ship, cargo, and freight have been saved, or where the lives of persons belonging to the ship, have been saved, the lien extends to the ship, cargo, and freight, each of which is liable to contribute to the salvage in proportion to its value (*l*).

And bullion on board a ship is liable to contribute to the salvage reward in proportion to its value rateably with the other property saved (*m*).

It is unnecessary that there should be any evidence that the ship in danger either requested or expressly

(*g*) *The Fusilier*, 34 L. J. Ad. 25.

(*h*) *Silver Bullion*, 2 Spk. 70.

(*i*) 17 & 18 V. (Imp.) c. 104, s. 182; *The Rosario* 2 P. D. 41; *sed vide*, *The Afrika*, 5 P. D. 192.

(*j*) 25 & 26 V. (Imp.) c. 63, s. 18. *The Ganges*, L. R. 2 Ad. 370.

(*k*) *The ship Quebec*, 3 Ex. C. R. 33.

(*l*) *Wms. & B.* 160.

(*m*) *The Longford*, 6 P. D. 60.

accepted assistance in cases where the court is satisfied that the circumstances were so urgent that, if an offer of service had been made, any prudent man would have accepted it (*n*).

There is no distinction between river salvage and sea salvage (*o*).

Provision is made in *The Merchant Shipping Act*, s. 497, as to salvage generally for a voluntary agreement being entered into, to have the same effect as the bond referred to, *post*, and which may be enforced in a Colonial Court having Admiralty jurisdiction.

Apportionment of Salvage.—The apportionment of the amount of a salvage award among several claimants, in the event of any dispute arising, is, by the statute, to be made by the receiver, or the minister, or by a court having jurisdiction (*p*).

Whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere than in the United Kingdom has been finally ascertained, whatever such amount may be, then if any dispute arises as to the apportionment thereof, any Court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto. (M. S. Act, s. 498).

Where the services have been rendered by officers and crews of Queen's ships, the salvage will generally be apportioned by the naval authorities according to the rules recognized in the service. And where revenue cruisers and coast-guardsmen are entitled to salvage, rules have been laid down for the distribution of salvage amongst them (*q*).

In other cases the matter is in the discretion of the court, and it will endeavour to apportion the salvage according to the circumstances in each case, so as to meet the fair and reasonable demand of each claimant.

The persons entitled to salvage are usually divided into classes, and a sum apportioned to each class, and then

(*n*) *The Vandyck*, 7 P. D. 42; 5 Asp. 17.

(*o*) *The Carrier Dove*, 2 Moo. P. C. N. S. 243.

(*p*) R. S. C. c. 81, s. 44.

(*q*) Wms. & B. 156.

divided among the members of that class. The ordinary classification is into (1) The officers and crew of a ship; (2) Persons assisting other than the officers and crew of the ship; (3) The owners of the ship (*r*).

Where the salvors belong to the same class of life, have incurred the same risk, and the same amount of labor, and have shown the same skill in the performance of the services, the English practice is to divide the amount equally amongst them all. But where some of the salvors have rendered special services, or have incurred peculiar risk, or sustained peculiar damage, they will be entitled to a larger share than the others (*s*).

Where some of the salvors are of superior station and capacity, and command and direct the services of others, they will be entitled to a larger share than those who act simply in pursuance of orders. Thus, where a pilot went off with boat men to render salvage service to a ship in distress, it was held that he was entitled to a larger share of the salvage than any of the boatmen. So the master and officers of a ship engaged in salvage will ordinarily be entitled to a greater share than any of the crew. And the amount allotted to the crew will generally be divided among them according to their respective ratings (*t*).

Where one ship supplies mariners to another ship in distress, the remainder of the crew of the vessel so supplying the other, as well as her master and owners, are entitled to some remuneration. But the seamen put on board are usually entitled to a greater remuneration than those left behind, proportionably greater or less, according to the danger they incur and the privations they suffer (*u*).

Where a mate was placed on board a vessel smitten with yellow fever, out of £900 salvage awarded, £600 was apportioned to him by the court (*v*).

When there are several sets of salvors the court will apportion the reward among them according to their

(*r*) ROSSON'S Ad. Pr. 2nd Ed. 29.

(*s*) *The Cleopatra*, 3 P. D. 145; *The Killeena*, 6 P. D. 199.

(*t*) *The Pride of Canada*, Br. & L. 209; *The Furnley Hall*, 4 Asp. 499, C. A.

(*u*) Wms. & B. 115, 157n.

(*v*) *The Skibladner*, 3 P. D. 24; 47 L. J. Ad. 84.

respective services; where they are equally deserving, the reward will be equally apportioned among them (*w*).

Priority of Salvage Claim.—The lien for salvage ranks before any other lien which attached previously to the services being rendered, because the salvors by saving the property have contributed to the benefit of all persons interested in it. Thus salvage takes priority of wages due at the time the ship was saved, but it may be different in the case of wages earned afterwards (*x*).

By the statute (*y*) salvage of life takes priority of all other claims for salvage.

Delay in enforcing the lien may prejudice the claim (*z*).

In appeals in salvage cases where the appeal is substantially confined to the *quantum* of compensation for salvage services awarded by the court below, the rule which governs the Appellate Court is similar to that of the Common Law Courts in dealing with a verdict as to the amount of damages where the jury have paid attention to the case and have been properly directed by the judge (*a*).

When salvage services have been rendered by Her Majesty's ships abroad, *i.e.*, out of the United Kingdom and the four seas adjoining thereto, the right of the salvors to detain, or retain possession of, the property saved ceases upon a bond being executed in the form following, *viz.*:

SALVAGE BOND.

[M. S. Act, s. 486, and schedule W.]:—

[*N.B.*—Any of the particulars not known, or not required by reason of the claim being only against the cargo, etc., may be omitted.]

Whereas certain salvage services are alleged to have been rendered by the ship [*insert names of ship and of commander*], commander, to the merchant ship [*insert names*

(*w*) *The Marquis of Huntley*, 3 Hag. 249.

(*x*) Wms. & B. 168.

(*y*) R. S. C. c. 81, s. 42.

(*z*) *The Royal Arch*, Sw. 285; *The Samuel*, 15 Jur. 407.

(*a*) *The Carrier Dove*, *supra*.

of ship and master; master, belonging to [name and place of business or residence of owner of ship], freighted by [the same, of the freighter], and to the cargo therein, consisting of [state very shortly the descriptions and quantities of the goods, and the names and addresses of their owners and consignees];

And whereas the said ship and cargo have been brought into the port of [insert name and situation of port], and a statement of the salvage claim has been sent to [insert the name of the Consular officer or Vice-Admiralty Judge, and of the office he fills], and he has fixed the amount to be inserted in this bond at the sum of [state the sum];

Now I, the said [master's name], do hereby, in pursuance of the Merchant Shipping Act, 1854, bind the several owners for the time being of the said ship and of the cargo therein, and of the freight payable in respect of such cargo, and their respective heirs, executors, and administrators, to pay among them such sum not exceeding the said sum of [state the sum fixed], in such proportions and to such persons as [if the parties agree on any other Court, substitute the name of it here], the High Court, Admiralty Division, in England, shall adjudge to be payable as salvage for the services so alleged to have been rendered as aforesaid.

In witness whereof I have hereunto set my hand and seal, this [insert the date] day of _____, 1893.

Signed, sealed, and delivered by the said [master's name].
(L.S.)

In the presence of [name of Consular Officer or Vice-Admiralty Judge, and of the office he fills]. (b)

WRECKING PRIVILEGES.

ACT OF CONGRESS U. S., MAY 24TH, 1890.

"Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled, that an Act entitled "An Act to aid vessels wrecked or disabled in the waters co-terminous to the United States

(b) In Canada "judge, or local judge of the Exchequer Court in Admiralty. And the bond may be adjudicated upon by such court." *Ibid*, s. 492.

and the Dominion of Canada," approved June 19, 1878, be and the same is hereby amended so that the same will read as follows: "That Canadian vessels and wrecking appliances may render aid and assistance to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to the Dominion of Canada."

Provided: That this Act shall not take effect until proclamation by the President of the United States, that the privilege of aiding American or other vessels and property wrecked, disabled, or in distress in Canadian waters contiguous to the United States, has been extended by the Government of the Dominion of Canada, to American vessels and wrecking appliances of all descriptions. This Act shall be construed to apply to the Welland canal, the canal and improvement of the waters between Lake Erie and Lake Huron, and to the waters of the Saint Mary's River and canal.

And provided further: That this Act shall cease to be in force from and after the date of the proclamation of the President of the United States, to the effect that said reciprocal privilege has been withdrawn, revoked or rendered in operative by the said Government of the Dominion of Canada."

"Approved, May 24th, 1890" (c).

Act of Parliament, Dominion of Canada, 55-56 V. c. 4, (1892), entitled: "An Act respecting Aid by United States Wreckers in Canadian Waters," as follows:—

1. United States vessels and wrecking appliances may save any property wrecked, and may render aid and assistance to any vessels wrecked, disabled or in distress, in the waters of Canada contiguous to the United States.

2. Aid and assistance include all necessary towing incident thereto.

(c) Vol. XXVI., U. S. Stat. at Large, c. 202.

3. Nothing in the customs or coasting laws of Canada shall restrict the salving operations of such vessels or wrecking appliances.

4. This Act shall come into force from and after a date to be named in a proclamation by the Governor-General, which proclamation may be issued when the Governor in Council is advised that the privilege of salving any property wrecked, and of aiding any vessels wrecked, disabled or in distress in United States waters contiguous to Canada, will be extended to Canadian vessels and wrecking appliances to the extent to which such privilege is granted by this Act to United States vessels and wrecking appliances.

5. This Act shall cease to be in force from and after a date to be named in a proclamation to be issued by the Governor-General to the effect that the said reciprocal privilege has been withdrawn, revoked or rendered inoperative with respect to Canadian vessels or wrecking appliances in United States waters contiguous to Canada.

By proclamation of the Governor-General, May 17, 1893. The foregoing Act came into force on and after the 1st day of June, 1893 (*1*).

The proclamation of the President of the United States, July 28, 1893, after recitals proceeds as follows :—

"Now, therefore, being thus satisfied that the privilege of aiding American or other vessels and property wrecked or disabled or in distress in Canadian waters contiguous to the United States has been extended by the Government of the Dominion of Canada to American vessels and wrecking appliances of all descriptions, I, Grover Cleveland, President of the United States of America, in virtue of the authority conferred upon me by the aforesaid Act of Congress, approved May 24, 1890, do proclaim that the condition specified in the legislation of Congress aforesaid now exists and is fulfilled, and that the provision of said Act of May, 24, 1890, whereby Canadian vessels and wrecking appliances may render aid and assist-

(*1*) Canada Gazette, Vol. XXVI., p. 2316.

ance to Canadian and other vessels and property wrecked, disabled or in distress in the waters of the United States contiguous to the Dominion of Canada, including the canal and improvements of the waters between Lake Erie and Lake Huron, and the waters of the St. Mary's River and Canal are now in full force and effect."

DAMAGE.

The Court of Admiralty has original jurisdiction to entertain claims for damage done to a vessel through the unjustifiable collision of another vessel, and for damage done to cargo on board such vessel, and for freight lost through the destruction of the ship. And the master and crew of a lost vessel, as well as a passenger, may sue in Admiralty for such monies and private effects of theirs as may have gone down with the vessel (*e*).

The cognizance which the Admiralty Court in England takes of cases of damage is based partly on original maritime jurisdiction and partly on statutes.

It is provided by 3 & 4 V. c. 65, s. 6, as follows:—that the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of . . . damage received by any ship or sea-going vessel . . . and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county or upon the high seas at the time when the . . . damage was received . . . in respect of which such claim is made. And *The Admiralty Court Act, 1861*, s. 7, provides that the Court shall have jurisdiction over any claim for damage done by any ship.

In *The Vice Admiralty Courts Act, 1863*, (now repealed) the jurisdiction as to damage was over "Claims for damage done by any ship."

Section 7, of the Act of 1861, has been held to extend to claims for damages done to a diver and his property (*f*).

(*e*) Coote's Ad. Pr. 2d Ed. 1.

(*f*) *The Sylph*, 2 N. R. 24 2 A. & E. 24.

or to a breakwater (*g*), or to a telegraph cable (*h*), or to a wharf (*i*).

The action for damages to cargo may be against the owners of the ship (*j*).

And by s. 3 of that Act the court has jurisdiction over "any claim by the owner, or consignee, or assignee of any bill of lading, of any goods carried into any port in England or Wales, ("Canada" to be substituted for "England or Wales," according to provision of the *C. C. A. Act*, 1890), in any ship, for damage done to the goods or any part thereof by the negligence, or misconduct of, or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it be shown to the satisfaction of the court, that at the time of the institution of the cause, any owner or past owner of the ship is domiciled in "England or Wales; "Canada," to be substituted for England or Wales" as before.

It is further provided in the *M. S. Act*, part 10, applicable by s. 517, to the whole of Her Majesty's dominions, that whenever any injury has in any part of the world been caused to any property belonging to Her Majesty, or to any of Her Majesty's subjects, by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within three miles of the coast . . . she may upon its being shown to the judge of any of the courts of record there named by any person applying summarily, that such injury was probably caused by the misconduct or want of skill of the master or mariners of the ship, be detained until satisfaction has been made, or security given to abide the event of any legal proceedings that may be instituted in respect of such injury, and to pay the costs and damages thereof. *M. S. Act*, ss. 527-529 (*k*).

(*g*) *The Uhla*, *Ib.* 29 n., *The Excelsior*, 2 A. & E. 268.

(*h*) *The Clara Killam*, 3 A. & E. 161.

(*i*) *The Chase*, Young's Ad. Decisions, Nova Scotia 113, affirmed by the Privy Council. *Ib.* 125.

(*j*) *The Ferro*, 1893, P. 38.

(*k*) *The Bilboa*, Lush. 149; *The Griefswald*, Sw. 430.

Owners who have chartered their vessel may sue in Admiralty for damage sustained in loss of the profits which they might have made out of the charter, but were prevented from making by the vessel being sunk in collision before going on the voyage (*l*).

As to collisions at sea it has been said that "there are four possibilities under which an accident of this sort may occur: 1st. It may happen without blame being imputed to either party: as where a loss is occasioned by a storm or other *vis major*. In that case the misfortune must be borne by the party on whom it happens to light; the other not being responsible to him in any degree. 2nd. A misfortune of this kind may arise where both parties are to blame; and there has been a want of diligence on both sides. In such a case the rule of law is that the loss must be apportioned between them. 3rd. It may happen by the misconduct of the suffering party alone; and then the rule is that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which ran the other down, and in this case the injured party would be entitled to an entire compensation from the other" (*m*).

Pilots.—Where the law makes the employment of pilots compulsory, the owners of a ship proceeded against for damage by collision may set up the defence that the vessel was at the time in charge of a pilot on board, and that the collision was caused by his act or default (*n*).

But by 36 V. c. 54, R. S. C. c. 80, s. 57, *The Pilotage Act*, the employment of a pilot is not compulsory, and nothing in the Act is to exempt any owner or master of a ship from liability for damage on the ground either of the ship being in charge of a licensed pilot, or of such loss or damage being occasioned by the act or default of a licensed pilot (*o*).

When the collision has been occasioned by inevitable accident, no liability attaches to either party (*p*).

(*l*) *The Argentino*, 13 P. D. C. A. 61, 191.

(*m*) Per Lord Stowell, in *The Woodrop Sims*, 2 Dods. 85.

(*n*) *The Hibernian*, 4 P. C. 511 (1872).

(*o*) See *The Wavelet*, Y. A. D. 34.

(*p*) *The Uhla*, 19 L. T. N. S. 89; *The Virgil*, 2 W. Rob. 205.

Where the collision is occasioned by the fault of both ships the loss is equally apportioned between them. (*q*)

The ship *M. C. U.* moored at wharf had anchor dropped some distance outside in the line of incoming vessels. The ship *E. B.* came in safely but in backing out, in a different line, ran into the anchor and suffered damage. It was held on the evidence that both vessels were to blame, and one-half damage should be borne by each as in cases of collision (*r*).

Two steamers approaching each other near a public harbour in dense fog with mutual notice of proximity maintained speed of over three knots an hour each, and a collision occurred. It was held, that that was not under the circumstances, a "moderate" speed within Art. 13 of the Regulations for Preventing Collisions at Sea, and that the vessels were mutually to blame for the collision; also that where both ships are at fault, the law apportions the loss by obliging each party to pay one-half the loss of the other (*s*).

Where two steamers of considerable length and draught, one entering, the other leaving the port of N., signalled to each other that they both proposed to take the same channel, which though short, was narrow and tortuous. One steamer being fully committed to the channel it was the duty of the other, under Art. 18, R. S. C. c. 79, to remain completely outside till the first had passed completely through. And where a collision appears possible, but as yet easily avoidable, it is the duty of each commander to take the steps requisite for the safety of both vessels and not to necessitate the other to resort to difficult or embarrassing manœuvres to avoid catastrophe (*t*).

Where two ships are equally to blame for a collision with a third, the owners of the injured ship can recover the damages from either (*u*).

(*q*) *Vaux v. Sheffer*; *The Innoganda Sara Claxina*, 8 Moo. P. C. 75; and R. S. C. c. 79, s. 7.

(*r*) *The M. C. Upper McCallum v. Odette*, 7 S. C. R. 36.

(*s*) *The Heather Belle v. The Fastnet*, 3 E. C. R. (Can.) 49.

(*t*) *The City of Puebla*, 3 E. C. R. (Can.) 26.

(*u*) *The Avon and Thomas Joliffe*; 1891, P. 7.

Where the master of a tug misunderstood the signals of a propeller, and directed his vessel on the wrong course when the two were in proximity, it was held the owners of the propeller were not liable; reversing decision of Maritime Court of Ontario (*v*).

If the collision is from the fault of one ship alone, the owner of the ship in fault must bear his own loss and make compensation for the damage done (*w*); and that although no actual collision took place (*x*), as where a ship is forced to change her course in consequence of the improper navigation of another, thereby doing damage to a third ship (*y*).

In a collision between a steamer and sailing vessel, in a fog the steamer was going half speed. Had she been going "dead slow" she might have been stopped in time. It was held that the steamer was partly in fault, although the collision was no doubt due to the want of a fog-horn on the sailing vessel (*z*).

Rafts.—If a raft of timber is too large to be controlled by the tug that has it in tow, the tug owners may be liable for damage arising from such want of control (*a*).

Owners of a vessel towed are liable for damage done by the tug, unless the vessel in tow could not control them (*b*).

The actual liability for the damage rests on the vessel which is the governing power. In ordinary cases, the tug is in the service and under the direction of the tow, and the tow is then answerable for the negligence of her servant, according to the ordinary rules of master and servant. But it sometimes happens that the "governing power" is entirely in the tug, and when this is the case, and when the tow is passive and is managed entirely by directions issuing from the tug, the liability will fall on the latter (*c*).

(*a*) *Robertson v. Wigle*; *The St. Magnus*, 16 S. C. R. 720.

(*w*) *The Catherine of Dover*, 2 Hagg, 164; 1 Parsons on Shipping (Am.), 525.

(*x*) *The Industrie*, 3 A. & E. 303.

(*y*) *The Sisters*, 1 P. D. 117, (C. A.)

(*z*) *The Zambesi*, (Johnson) *The Fanny Dutard* (Upton), 3 E. C. R. (Can.) 67.

(*a*) *The John Owen*, 5 C. L. T., 565; and see Cassels' Dig. 1893, for Sup. Ct. Rep., pp. 519, 520.

(*b*) *The Niobe*, 13 P. D. 55.

(*c*) Boyd's Merchant Shipping Laws, (Ed. 1876) 268.

The burden of proof is on the owners of the vessel in motion to show that the collision was not through their negligence where a collision has taken place between a ship in motion and a ship at anchor (*d*).

Personal Damage.—It has been held that "damage" within the meaning of the 7th section referred to includes personal injury; and that a diver who was injured by the paddle-wheel of a steamship owing to the negligence of those in charge of the steamship, was entitled to an action of damage against such steamship (*e*).

A passenger may sue the master of a ship in Admiralty for personal injury suffered on board at the hands of the master (*f*).

A seaman, also, may recover damages against the master for ill usage (*g*).

In actions of damage for breach of contract within the meaning of section 6 of the *Admiralty Court Act*, 1861, the contract will be constructed according to the law of any country which the parties expressly or impliedly agreed should govern the case. (*h*) If no such law has been agreed on, the contract is governed by the law of the country under whose flag the ship sails (*i*).

Damage to Cargo.—In a collision arising otherwise than through unavoidable accident, if damage is done to cargo, the owner of the cargo can recover damages from the ship that has caused the injury.

Where both ships are to blame, the owner of the cargo is entitled to recover half of the damage from the ship which collided with the ship carrying the cargo; the other half from the ship carrying the cargo (*j*); but in an action

(*d*) *The Annot Lyle*, 11 P. D. 114; *The Indus*, 12 P. D. 46; and see *The European*, 10 P. D. 99; *The Merchant Prince*, 1892, P. 9.

(*e*) *Wms. & B.* 73; see *The Vera Cruz*, 10 App. Cas. 59, 72.

(*f*) *The Ruckers*, 4 C. Rob. 180.

(*g*) *The Enchantress*, 1 Hagg. 395; Abbott on Shipping, 13th Ed. 810.

(*h*) *The Patria*, 3 A. & E. 436, 462.

(*i*) MacLachlan's *M. S. laws*, 4th Ed. 66, 180; *Lloyd v. Guibert*, L. R. 1 Q. B. 115; 33 L. J. Q. B. 241; *The Empress*, 41 L. J. Ad. 79.

(*j*) *The Milan*, Lush. 404. See also *The City of Manchester*, 5 P. D. 3, 21; *The Consett*, 5 P. D. 229.

under *Lord Campbell's Act* the whole damage may be recovered against the owners of one of two ships which are both to blame (*k*).

Persons who furnish mooring for unloading of vessels impliedly undertake that they have used reasonable care to ascertain that the bottom of the moorage is not in a condition to cause danger to the vessel, otherwise they will be held liable for damage sustained by her (*l*).

Under s. 6, *A. C. Act*, 1861, an assignee of a bill of lading bringing action thereon must have a beneficial interest in the goods, and not that merely of a bare assignee (*m*).

It is immaterial that the goods are only incidentally brought here (*n*).

The remedy is only against the ship in which the goods are actually carried, not against a vessel from which they have been transhipped (*o*).

The withholding by the master from the holder of a bill of lading such particulars within his knowledge as are necessary in order to compute the amount of freight and general average contribution (*p*); refusal by the master to deliver goods to a vendor having and asserting his right to stop the goods *in transitu* (*q*); and barratrous acts on the part of the crew: have all been held breaches of duty or contract within the meaning of section 6 of the Act (*r*).

If a defendant brings a cross-action, each owner recovers one-half of his own loss (*s*).

The court can also order a plaintiff in an action for damages by collision to give security for damages to a defendant who counter-claims (*t*).

(*k*) *The Bernina*, 12 P. D. 58 C. A.

(*l*) *The Moorecock*, 13 P. D. 157.

(*m*) *The St. Cloud*, Br. & L. 4.

(*n*) *The Bahia*, Br. & L. 61.

(*o*) *The Ironsides*, Lush. 458.

(*p*) *The Norway*, Br. & L. 226.

(*q*) *The Tygress*, Br. & L. 38.

(*r*) *Wms. & B.* 110.

(*s*) *The Shannon*, 1 W. Rob. 463; *The Chartered Bank v. Netherlands Co.*, 10 Q. B. D. 521; *Mills v. Armstrong*, 13 App. Cas. 1.

(*t*) *The Newbattle*, 10 P. D. 33.

The maritime lien which arises from damage by collision attaches to the ship doing the injury, and its appurtenances (*u*), and also to the freight (*v*).

Cargo not on board at the time the injury was done may be arrested in respect of freight already earned or being earned at the time of the collision (*w*).

In an action for damage by collision instituted 11 years after the claim arose, the plaintiff not having had an opportunity to arrest defendant vessel at an earlier date: it was held that interest was properly allowed according to the practice of Admiralty for the whole period (*x*).

In the assessment of the damages, all the direct consequences of the injury, such as the loss of freight, detention, and expense, are to be taken into consideration (*y*), and loss of a contract (*z*), the maxim being *restitutio in integrum* (*u*), but not the damage in respect of loss of market caused by delay (*b*), nor a sum paid as commission, for bail in a salvage action brought against the injured ship (*c*).

Compensation for loss of freight.—Where a ship under charter was totally lost together with her cargo in consequence of a collision, the amount of the gross freight was ascertained, and from this was deducted the charges which would necessarily have been incurred in earning the freight and which were saved to the owner in consequence of his ship being unable to proceed: the sum thus obtained, together with interest from the date of the probable termination of the voyage, was declared to be the measure of damages (*d*).

(*v*) *The Alexander*, 1 Dodds. 278; *The Dundee*, 1 Hagg. 104.

(*v*) *The Rowcliff*, 2 A. & E. 363; 38 L. J. Ad. 56.

(*w*) *The Leo*, Lush. 444; 21 L. J. Ad. 78; *The Orpheus*, 3 A. & E. 308; 4 L. J. Ad. 24.

(*x*) *The Kong Magnus*, 1891, P. 223.

(*y*) *The Conssett*, 5 P. D. 229; Boyd N. S. Laws, 260; *The City of Lincoln*, 15 P. D. 15.

(*z*) *The Argentine*, 13 P. D. 191.

(*a*) *The Blenheim*, 10 P. D.; *The Clyde*, S. W. 24.

(*b*) *The Notting Hill*, 9 P. D. 105.

(*c*) *The British Commerce*, 9 P. D. 128.

(*d*) *The Canada*, Lush. 586.

The practice of the registrar and merchants is to inquire: 1st, what would have been the amount of freight payable had she arrived at the port of destination; 2nd, the amount for which the ship would have sold at such port after she had discharged her cargo. The aggregate of these is taken to be the value of the ship and freight, and interest on that sum is allowed, not from the date of the collision, but from the time when she would probably have reached the port of destination (*e*).

If a ship carrying cargo on ship's account is lost with her cargo in consequence of a collision, the shipowner is entitled to recover as damages in lieu of freight the difference between the value of the cargo when shipped and what would have been its enhanced value if it had been delivered free of freight and undamaged at the port of delivery; the enhanced value being the amount which could have been obtained for the cargo, less such costs and expenses as would necessarily have been incurred in order to carry the cargo to the port of delivery and sell it there (*f*).

The court will decide the question of amount of damages at the hearing, when it can do so instead of referring it to the registrar and merchants (*g*).

The court has jurisdiction in actions for damages arising out of collision between two British ships in foreign inland waters; (*h*) or between foreign ships in foreign waters; (*i*) or between a British ship and a foreign ship on the high seas. (*j*)

The jurisdiction does not extend to foreign public ships; the comity of nations exempts them (*k*).

Damage from Wrongful Arrest of Ship.—Proof of actual damage is not necessary to sustain an action in a Court of Admiralty for wrongful arrest, if the seizure of

(*e*) *The Armalia*, 5 N. R. 164.

(*f*) *The Thyatira*, 32 W. R. 276; 5 Asp. 178.

(*g*) *The Maid of Kent*, 50 L. J. Ad. 71.

(*h*) *The Diana*, Lush. 539.

(*i*) *The Courier*, *Ibid.* 541.

(*j*) *The Leon*, 6 P. D. 148.

(*k*) *The Parliament Belge*, 5 P. D. 197; *The Charkieh*, 4 A. & E. 59.

the vessel was the result of *mala fides* or *crassa negligencia* implying malice (1).

FORM OF PRELIMINARY ACT IN ACTION FOR DAMAGE BY COLLISION (m).

1892.—[Number]

[Title.]

[Preliminary Acts.]

| | ON BEHALF OF THE PLAINTIFFS, OWNERS OF THE <i>Leo</i> . | ON BEHALF OF THE DEFENDANTS, OWNERS OF THE <i>Juno</i> . |
|--|---|--|
| 1. The names of the ships which came into collision, and the names of their masters. | 1. The <i>Leo</i> . A. B., Master. The <i>Juno</i> . C. D., Master. | 1. The ship <i>Juno</i> . C. D., Master. The <i>Leo</i> . A. B., Master. |
| 2. The time of collision. | 2. About 11.40 a.m. on September 29, 1891. | 2. About 11 a.m. on September 29, 1891. |
| 3. The place of collision. | 3. The River St. Lawrence, a short distance below Quebec. | 3. Mid-river, off the River St. Lawrence. |
| 4. The direction of wind. | 4. No wind, or scarcely any—south, south-east. | 4. About S. E. |
| 5. The state of the weather. | 5. Thick fog, wind having died suddenly away. | 5. Hazy. |
| 6. The state and force of the tide, or if the collision occurred in non-tidal waters, of the current. | 6. | 6. |
| 7. The course and speed of the ship when the other was first seen. | 7. | 7. |
| 8. The lights, if any, carried by her. | 8. | 8. None. |

(1) *The Walter D. Wulley*, 1893, P. 202.

(m) *Ante*, p. 34.

[Preliminary Acts]—Continued.

| | ON BEHALF OF THE PLAINTIFFS, OWNERS OF THE <i>Leo</i> . | ON BEHALF OF THE DEFENDANTS, OWNERS OF THE <i>Juno</i> . |
|--|---|--|
| 9. The distance and bearing of the other ship when first seen. | 9. About three points on starboard bow. About a cable's length off. | 9. About five or six ship's lengths off, and on the port bow of the <i>Juno</i> . |
| 10. The lights, if any, of the other ship which were first seen. | 10. | 10. None. |
| 11. The lights, if any, of the other ship other than those first seen, which came into view before the collision. | 11. | 11. None. |
| 12. The measures which were taken, and when, to avoid the collision. | 12. Helm kept a starboard and <i>Juno</i> hailed loudly several times to starboard her helm and sheer to-side. | 12. The helm of the <i>Juno</i> was starboarded as soon as she was hailed from the <i>Leo</i> to starboard. |
| 13. The parts of each ship which first came into collision. | 13. Starboard fore rigging of the <i>Leo</i> , chain and stem of <i>Juno</i> . | 13. The stem of the <i>Juno</i> , and the starboard side of the <i>Leo</i> . |
| 14. What fault or default, if any, is attributed to the other ship. | | |
| | The day of 18 . | The day of 18 . |
| | X. Y., Plaintiff's Solicitor. | S. W., Defendant's Solicitor. |

NAVIGATION OF CANADIAN WATERS.

An Act respecting the Navigation of Canadian Waters,

R. S. C. c. 70.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

INTERPRETATION.

1. In this Act, unless the context otherwise requires,— Interpretation

(a) The expression "vessel" includes every description "Vessel." of vessel used in navigation ;

(b) The expression "ship" includes every description "Ship." of vessel not propelled by oars ;

(c) The expression "steamship" or "steambot" "Steamboat" or "steamer" includes every vessel propelled wholly or in part by steam ship." or by any machinery or power other than sails or oars ;

(d) The expression "ordinary practice of seamen," "Practice of seamen." as "Practice of seamen." applied to any case, means and includes the ordinary practice of skilful and careful persons engaged in navigating the waters of Canada in like cases ;

(e) The expression "owner" includes the lessee or "Owner." charterer of any vessel having the control of the navigation thereof. 43 V. c. 29, s. 3.

REGULATIONS FOR PREVENTING COLLISIONS. (a).

2. The following rules with respect to lights, fog signals, steering and sailing and rafts, shall apply to all the Extent of application of the following rules.

(a) The Imperial Regulations, upon which these are founded, and which came into force 1st Sept., 1884 (Order in Council, 9 P. D., 248), apply to British, and by international assent, to French, Italian, Greek, Portuguese, Norwegian, Swedish, Brazilian, Turkish, Chilean, and Danish ships and boats (Marsden's Law of Collisions at Sea, 3rd ed., 358). The United States have adopted regulations very nearly corresponding (Gould & Tucker's Rev. Stats. U. S., 1889, p. 785 ; see also "An Act to adopt the Revised International Regulations for the Prevention of Collisions at Sea," 23 U. S. Stats. at Large, c. 334,

Arts. 1-3. rivers, lakes and other navigable waters within Canada, or within the jurisdiction of the Parliament thereof; that is to say:—

Preliminary.

Steamships
under sail or
under steam.

Art. 1. In the following rules every steamship which is under sail, and not under steam, is to be considered a sailing ship; and every steamship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

What lights
shall be
carried.

Art. 2. The lights mentioned in the following Articles, numbered 3, 4, 5, 6, 7, 8, 9, 10 and 11, and no others, shall be carried in all weathers, from sunset to sunrise (b).

By steamships
under way.
At foremast
head.

Art. 3. A steamship when under way shall carry—

(a) On or in front of the foremast, at a height above the hull of not less than twenty feet, and if the breadth of the ship exceeds twenty feet, then at a height above the hull not less than such breadth, a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass,—so fixed as to throw the light ten points on each side of the ship, viz., from right ahead to two points abaft the beam on either side,—and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles;

On starboard
side.

(b) On the starboard side, a green light so constructed as to show an uniform and unbroken light over an arc of the horizon of ten points of the compass,—so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side,—and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles;

and American Admiralty Courts have applied them (*The Sylvester Hale*, 6 Benedict, 523; *The Free State*, Brown, Ad. 251, 261; *The Scotia*, 7 Blachf. 308, 14 Wall. 170; *The Belyenland*, 7 Davis, 355; *The Rolf*, 47 Fed. Rep. (1891) 220; *The Lisbonense*, 53 *Ibid.* 203; *The St. John*, 54, *Ibid.* 1015).

(b) See *The Anglo Indian*, 23 W. R. 882, 33 L. T. N. S. 233; *The Mary Hounsell*, 4 P. D. 204; *The Imbro*, 14 P. D. 73; *The Rob Roy*, 3 W. Rob. 190; *The Lorne*, 2 Stu. V. Ad. 177; *The Scotia*, *supra*. Henry's Adm. (Am.) 279.

(c) On the port side, a red light, so constructed as to ^{Arts. 4, 5.} show an uniform and unbroken light over an arc of the horizon of ten points of the compass,—so fixed as to throw the light from right ahead to two points abaft the beam on the port side,—and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles;

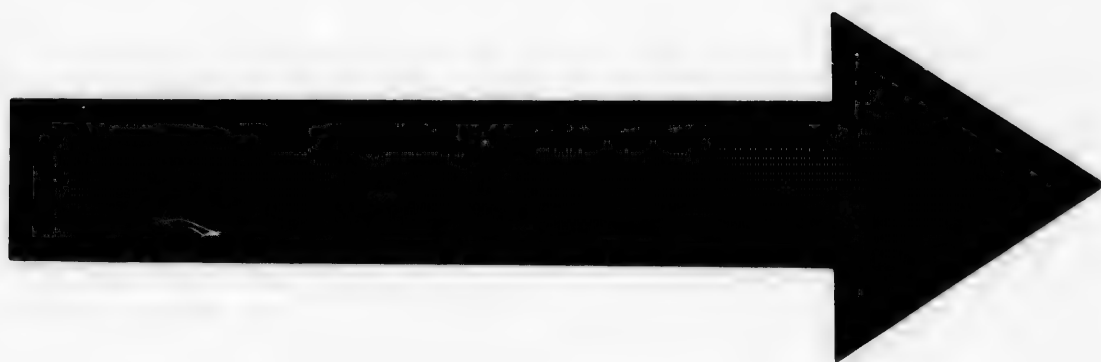
(d) The said green and red side lights shall be fitted ^{How to be fitted.} with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow (c).

Art. 4. A steamship, when towing another ship, a raft ^{By steamships towing.} or rafts, shall, in addition to her side lights, carry two bright white lights in a verticle line, one over the other, not less than three feet apart, so as to distinguish her from other steamships: each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light which other steamships are required to carry.

Art. 5. A ship, whether a steamship or a sailing ship, ^{Lights and shapes, by steam or sailing ships when not under command.} when employed either in laying or in picking up a telegraph cable, or which from any accident is not under command, shall at night carry, in the same position as the white light which steamships are required to carry, and, if a steamship, in place of that light, three red lights in globular lanterns, each not less than ten inches in diameter, in a vertical line one over the other, not less than three feet apart: and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of but not lower than her foremast head three black balls or shapes, each two feet in diameter;

(a) These shapes and lights are to be taken by ap- ^{What to denote} proaching ships as signals that the ship using them is not under command, and cannot therefore get out of the way;

(c) *The Fire Queen*, 12 P. D. 147; *The Dunelm*, 9 P. D. 164.



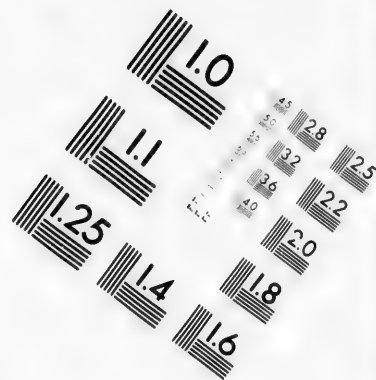
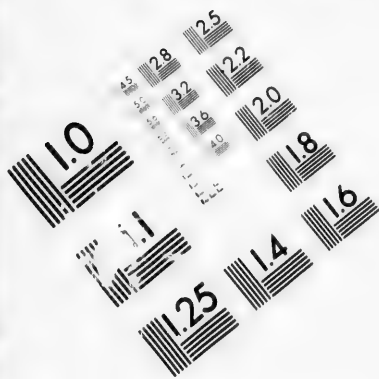
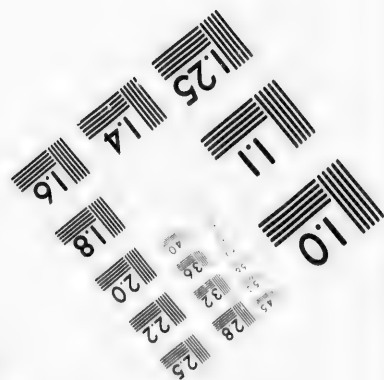
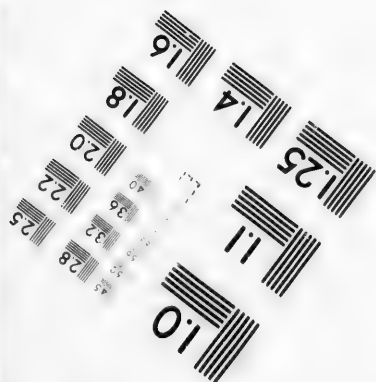
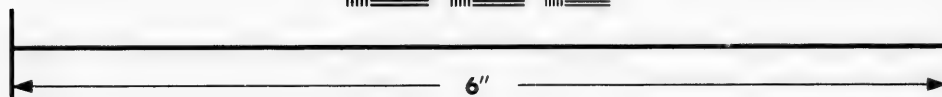
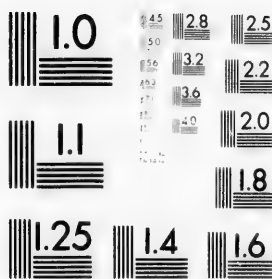
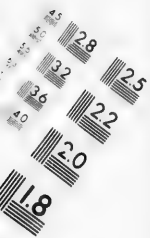


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Arts. 6-9.

When to carry
side lights.

(b) The above ships, when not making any way through the water, shall not carry the side lights, but when making way shall carry them (d);

By sailing
ships in
motion.

Art. 6. A sailing ship under way, or being towed, shall carry the same lights as are provided by Article 3 for a steamship under way, with the exception of the white light,—which she shall never carry (e).

By small
vessels in bad
weather.

Art. 7. Whenever, as in the case of small vessels during bad weather, the green and red side lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the star-board side;

Lanterns to be
painted out-
side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

By ships at
anchor.

Art. 8. A ship, whether a steamship or a sailing ship, when at anchor, shall carry, where it can be best seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear, uniform and unbroken light, visible all around the horizon, and at a distance of at least one mile (f).

By pilot
vessels on
duty.

Art. 9. A pilot vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the masthead, visible all around the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes:

(d) *The Mary Hounsell*, *supra*; *The Buckhurst*, 6 P. D. 152; *The P. Caland*, 1892, P. 191; 1893, A. C. (H. L.) 207.

(e) *The Esk* and *The Gitana*, 2 A. & E. 350; *The Duke of Buccleugh*, 15 P. D. 86.

(f) *The C. M. Palmer*, 29 L. T. N. S. 120; *The Mary Hounsell*, *supra*.

(a) A pilot vessel, when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships (g). Art. 10.
When not on duty.

Art. 10. (a) Open fishing boats and other open boats when under way shall not be obliged to carry the side lights required for other vessels; but every such boat shall, in lieu thereof, have ready at hand a lantern with a green glass on the one side and a red glass on the other side; and on the approach of or to the other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side; Open fishing and other boats.

(b) A fishing vessel, and an open boat, when at the anchor, shall exhibit a bright white light; When at anchor.

(c) A fishing vessel when employed in drift net fishing shall carry on one of her masts two red lights in a vertical line, one over the other, not less than three feet apart; Fishing vessels when drift net fishing.

(d) A trawler at work shall carry on one of her masts two lights in a vertical line, one over the other, not less than three feet apart, the upper light red, and the lower green, and shall also either carry the side lights required for other vessels, or, if the side lights cannot be carried, have ready at hand the coloured lights as provided in Article 7, or a lantern with a red and a green glass as described in paragraph (a) of this Article; Trawlers at work.

(e) Fishing vessels and open boats shall not be prevented from using flare-up light in addition, if they desire so to do; Flare-up lights.

(f) The lights mentioned in this Article are substituted for those mentioned in the 12th, 13th and 14th Articles of the Convention between France and England scheduled to *The British Sea Fisheries Act, 1868*; The said lights substituted for those under convention with France.

(g) All lights required by this Article, except side lights, shall be in globular lanterns, so constructed as to show all round the horizon (h). Lanterns for lights.

(g) *The Dunelm*, 9 P. D. 164.

(h) *The Warwick*, 15 P. D. 180; *The Tweeddale*, 14 P. D. 164; *The Dunelm*, *supra*.

Arts. 11-13.

Ship overtaken
by another.

Art. 11. A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light (i).

Sound Signals for Fog, etc.

Steamships
to have certain
sound signals.

Art. 12. A steam-ship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstruction, and also with an efficient bell. A sailing-ship shall be provided with an efficient fog horn, to be sounded by a bellows or other mechanical means, and also with an efficient bell;

In fogs, etc.

In fog, mist, or falling snow, whether by day or night, the signals described in this Article shall be used as follows; that is to say:—

Blasts at
interval by
steamships.

(a) A steam-ship under way shall make with her steam whistle or other steam sound signal, at intervals of not more than two minutes, a prolonged blast;

Signals by fog-
horn by sailing
ships.

(b) A sailing-ship under way shall make with her fog horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on port tack, two blasts in succession, and when with the wind abaft the beam, three blasts in succession;

By ringing bell.

(c) A steam-ship and a sailing-ship, when not under way shall, at intervals of not more than two minutes, ring the bell (j).

Speed of Ships to be moderate in Fog, etc.

Speed re-
stricted in fog,
etc.

Art. 13. Every ship, whether a sailing-ship or steam-ship shall, in a fog, mist, or falling snow, go at a moderate speed (k).

(i) *The Stakesby*, 15 P. D. 166; *The Imbro*, 14 P. D. 73; *The Palinurus*, 13 P. D. 14; *The Patroclus*, 13 P. D. 54; *The Essequibo*, 13 P. D. 5; *The Main*, 11 P. D. 132; *The Breadalbane*, 7 P. D. 186; *The Pacific*, 9 P. D. 124; *The Sardinian*, 2 R. & G. (Nov. Sec.) 499.

(j) *The N. Strong*, 1892, p. 105; *The Love Bird*, 6 P. D. 80; *The Rosalia*, 5 P. D. 245; *The Zadok*, 9 P. D. 114; *The Zambesi*, 3 E. C. R. (Can.) 67.

(k) *The Ebor*, 11 P. D. 25; *The Dordogne*, 10 P. D. 6; *The Beta*, 9 P. D. 134; *The Zadok*, 9 P. D. 114; *The Kirby Hall*, 8 P. D. 71; *The Love Bird*, *supra*; *The Heather Belle and Fastnet*, 3 E. C. R. 40; *Lohnes v. The Barætona*, 10 Q. B. R. 305.

Steering and Sailing Rules (l).

Arts. 14, 15.

Art. 14. When two sailing-ships are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, that is to say:—

Sailing ships meeting.

(a) A ship which is running free shall keep out of the way of a ship which is close-hauled;

(b) A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack;

(c) When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other;

(d) When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward;

(e) A ship which has the wind aft shall keep out of the way of the other ship.

Art. 15. If two ships under steam are meeting end on or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other (ll):

Steamships meeting.

(a) This Article only applies to cases where ships are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other;

Limitation of this article.

(b) The only cases to which it does apply are, when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, by day, each ship sees the masts of the other in a line, or nearly in a line with her own; and by night, to cases in which each ship is in such a position as to see both the side lights of the other;

Cases to which it applies.

(c) It does not apply by day, to cases in which a ship sees another ahead crossing her own course, or by night, to apply.

Cases to which it does not apply.

(l) *The Tumbler*, 14 P. D. 51; *The Byfoged Christensen*—*The William Frederick*, 4 Asp. 201, 14 (a); *The Steornia*, *The Eclipse*, Lush. P. C. 410.
(ll) Allan v. Reford, *The Polynesian*, *The Cynthia*, Q. L. R. 341, 1889.

Arts. 16-19.

cases where the red light of one ship is opposed to the red light of the other, or where the green light of one ship is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Steamships
crossing.

Art. 16. If two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other (*m*).

Steamships
and sailing
ships.

Art. 17. If two ships, one of which is a sailing-ship and the other a steam-ship, are proceeding in such directions as to involve risk of collision, the steam-ship shall keep out of the way of the sailing ship (*n*).

Steamships
nearing a
vessel.

Art. 18. Every steam-ship when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary (*o*).

How steam-
ships may
signal by
steam.

Art. 19. In taking any course authorized or required by these regulations, a steam-ship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, that is to say:—

One short blast to mean "I am directing my course to starboard;"

(*m*) *The Ranger*, and *The Cologne*, 27 L. T. N. S. 769; 4 L. R. P. C. 519; *The Concordia*, 1 A. & E. 93; 14 L. T. N. S. 896; *The Nor*, 30 L. T. N. S. P. C. 576; *The Ada*, 28 C. T. N. S. 825; *The Velocity*, 3 L. R. P. C. 44; 39 L. J. Ad. 20; *The Franconia*, 2 P. D. 8, 163; *The Leverington*, 11 P. D. 117; *The Seaton*, 9 P. D. 1; *The Beryl*, 9 P. D. 137; *The Moliere*, 1893, P. 217.

(*n*) *The Saxonia*, *The Eclipse*, *supra*; *The Jennie S. Barker*, 44 L. J. Ad. 20; 4 A. & E. 456; *The American* and *The Syria*, 4 A. & E. 226; *The Warrior*, 27 L. T. N. S. 101; 3 A. & E. 532; *The Norma*, 35 L. T. N. S. 418; *The Tweeddale*, 14 P. D. 164; *The F. J. King*, 8 C. L. T. 159.

(*o*) *The Jesmond* and *The Earl of Elgin*, 4 L. R. P. C. 1; 8 Moo. P. C. N. S. 179; *The Norma*, 35 L. T. N. S. 418; *The Frankland*, 4 L. R. P. C. 529; 27 L. T. N. S. 43; *The Ceto*, 14 App. Cas. 686; *The Ebor*, *supra*; *The Dordogne*, 10 P. D. 6; *The Benares*, 9 P. D. 16; *The John McIntyre*, 9 P. D. 135; *The Beryl*, 9 P. D. 137; *The Kirby Hall*, 8 P. D. 71; *The Love Bird*, 6 P. D. 80; *The Rosalia*, *supra*; *The City of Pueblo*, 3 E. C. R. (Can.) 26; *The Heather Belle* and *Fastnet*, 3 E. C. R. (Can.) 40; *The Lancashire*, 1893, P. 47 C. A.

Two short blasts to mean "I am directing my course to port;" Arts. 20-24

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional; but if they are used, the course of the ship must be in accordance with the signal made. Signalling to be optional.

Art. 20. Notwithstanding anything contained in any preceding Article, every ship, whether a sailing-ship or a steam-ship, overtaking any other, shall keep out of the way of the overtaken ship (*p*). Ship overtaking another.

Art. 21. In narrow channels every steam-ship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship (*q*). Steamships in narrow channels.

Art. 22. When by the above rules one of two ships is to keep out of the way, the other shall keep her course (*r*). Ship keeping out of the way

Art. 23. In obeying and construing these rules, due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger (*s*). Regard to be had to dangers of navigation.

No ship, under any circumstances, to neglect proper precautions.

Art. 24. Nothing in these rules shall exonerate any ship, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect Rules not to excuse.

(*p*) *The Earl Spencer*, 33 L. T. N. S. 23; 4 A. & E. 431; *The Main*, 11 P. D. 132; *The Kirby Hall*, 8 P. D. 71; *The Moliere*, 1893, P. 217.

(*q*) *The Rhodda*, 8 App. Cas. 549; *The Leverington*, 11 P. D. 117; *The Clydeoch*, 5 Asp. 336; *The F. J. King*, 8 C. L. T. 159.

(*r*) *The Warrior*, *supra*; *The Norma*, *supra*; *The Tasmania*, *supra*; *The Leverington*, 11 P. D. 117; *The Beryl*, 9 P. D. 137.

(*s*) *The Aino and Amelia*, 21 W. R. 707; 29 L. T. N. S. 118; *The American and The Syria*, *supra*; *The Warrior*, *supra*; *The Ada*, *supra*; *The Bywell Castle*, 4 P. D. 219 C. A.; *The Benares*, 9 P. D. 16; *The Tasmania*, *supra*; *The Tweedsdale*, 14 P. D. 164.

Arts. 25-28. of any precaution required by the ordinary practice of seamen, or by the special circumstances of the case (*t*).

Reservation of Rules for Harbours and Inland Navigation.

Rules by local authorities.

Art. 25. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river or inland navigation (*tt*).

Special Lights for Squadrons and Convoys.

Squadrons or convoys.

Art. 26. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for ships sailing under convoy.

Rafts and Harbour of Sorel.

Rules for rafts.

Art. 27. Rafts, while drifting or at anchor on any of the waters of Canada, shall have a bright fire kept burning on them from sunset to sunrise. Whenever any raft is going in the same direction as another which is ahead, the one shall be so navigated as not to come within twenty yards of the other, and every vessel, meeting or overtaking a raft shall keep out of the way thereof. Rafts shall be so navigated and anchored as not to cause any unnecessary impediment or obstruction to vessels navigating the same waters (*u*).

Not to obstruct vessels

Harbour of Sorel.

Art. 28. Unless it is otherwise directed by the Harbour Commissioners of Montreal, ships and vessels entering or leaving the harbour of Sorel shall take the port side, anything in the preceding Articles to the contrary notwithstanding.

(*t*) *The John Fenwick*, 41 L. J. Ad. 500; 3 A. & E. 500; *The Thomas Lea*, 35 L. T. N. S. 406; *The Philotaxe*, 37 L. T. N. S. 540; *The F. J. King*, *supra*; *The William Lindsay*, L. R. 5 P. C. 343; *The Calcutta*, 21 L. T. N. S. (P.C.) 768; *The Clementine*, Y. A. D. 186; *The Alhambra*, 2 R. & G. Nova Scotia 512.

(*tt*) See *The Edith Weir*, Y. A. D. 237.

(*u*) *The John Owen*, 5 C. L. T. 565, affirmed by Supreme Court; see *Cas- sel's Dig.*, 1893, p. 519; *Fradette v. The Rival*, 11 Q. L. R. 382.

Art. 29. The rules of navigation contained in Articles 27 and 28 shall be subject to the provisions contained in Articles 23 and 24; 43 V. c. 29, s. 2; 44 V. c. 21, s. 2; 49 V. c. 4, s. 2 and schedule.

Art. 29.

As to Articles 27 and 28.

LOCAL BY-LAWS, PENALTIES, ETC.

Secs. 3-6.

3. No rule or by-law of the Harbour Commissioners of Montreal or the Trinity House of Quebec, or Quebec Harbour Commissioners, or other local rule or by-law inconsistent with this Act, shall be of any force or effect; but so far as it is not inconsistent with this Act, any such rule or by-law made by the said Harbour Commissioners of Montreal or Trinity House of Quebec, or Quebec Harbour Commissioners, or other competent local authority shall be of full force and effect within the locality to which it applies. 43 V. c. 29, s. 4.

Provision as to local by-laws and rules.

4. All owners, masters and persons in charge of any ship, vessel, or raft shall obey the rules prescribed by this Act, and shall not carry and exhibit any other lights or use any other fog signals than such as are required by the said rules; and in case of wilful default, such master or person in charge, or such owner, if it appears that he was in fault, shall, for each occasion on which any of the said rules is violated, incur a penalty not exceeding two hundred dollars and not less than twenty dollars. 43 V. c. 29, s. 5.

Penalty for wilful disobedience of this Act.

5. If, in any case of collision, it appears to the court before which the case is tried, that such collision was occasioned by the non-observance of any of the rules prescribed by this Act, the vessel or raft by which such rules have been violated, shall be deemed to be in fault; unless it can be shown to the satisfaction of the court that the circumstances of the case rendered a departure from the said rules necessary. 43 V. c. 29, s. 6 (v).

Collision from non-observance of rules.

6. If any damage to person or property arises from the non-observance by any vessel or raft of any of the rules prescribed by this Act, such damage shall be deemed to

Liability for damage occasioned by non-observance of rules.

(v) See *The Hibernia*, 31 L. T. N. S. 804; 4 W. R. 60; *The Maquet*, 4 A. & E. 417; *The Buckhurst*, 6 P. D. 152.

Secs. 7, 8. have been occasioned by the wilful default of the person in charge of such raft, or of the deck of such vessel at the time, unless the contrary is proved, or it is shown to the satisfaction of the court that the circumstances of the case rendered a departure from the said rules necessary; and the owner of the vessel or raft in all civil proceedings, and the master or person in charge as aforesaid, or the owner,—if it appears that he was in fault,—in all proceedings, civil or criminal, shall be subject to the legal consequences of such default. 43 V. c. 29, s. 7 (*w*).

Civil or criminal.

Case where both vessels are in fault.

Imp. Act 36-37 V. c. 66.

Recovery of penalties.

If not paid.

Application.

Exception.

7. In any cause or proceeding for damages arising out of a collision between two vessels, or a vessel and a raft, if both vessels or both the vessel and the raft are found to have been in fault, the rules heretofore in force in the Court of Admiralty in England, and now in Her Majesty's High Court of Justice, under the "*Supreme Court of Judicature Act, 1873*," so far as they are at variance with the rules in force in the courts of common law, shall prevail, and the damages shall be borne equally by the two vessels, or the vessel and the raft, one-half by each. 43 V. c. 29, s. 8.

8. Unless herein otherwise provided, all penalties incurred under this Act may be recovered in the name of Her Majesty, by any inspector of steam-boats, or by any person aggrieved by any act, neglect or wilful omission by which the penalty is incurred, before any two justices of the peace, on the evidence of one credible witness; and in default of payment of such penalty, such justices may commit the offender to gaol for any term not exceeding three months; and, except as hereinafter provided, all penalties recovered under this Act shall be paid over to the Minister of Finance and Receiver General, and shall be by him placed at the credit of and shall form part of the Steam-boat Inspection Fund: Provided always, that all penalties incurred for any offence against this Act shall, if such offence is committed within the jurisdiction of the

(*w*) See *The Buckhurst*, 6 P. D. 152; and *The Eastern Steamship Co. v. Smith*, 1891, C. D. 310.

Quebec Harbour Commissioners, or of the Harbour Commissioners of Montreal, be sued for, recovered, enforced and applied in like manner as penalties imposed for the violation of the by-laws of the said Harbour Commissioners within whose jurisdiction the offence is committed. 43 V. c. 29, s. 9.

Secs. 9-11.

9. Whenever foreign ships are within Canadian waters, Foreign ships in Canadian waters. the rules for preventing collisions prescribed by this Act, and all provisions of this Act relating to such rules, or otherwise relating to collisions, shall apply to such foreign ships; and in any case arising in any court of justice in Canada concerning matters happening within Canadian waters, foreign ships shall, so far as regards such rules and provisions, be treated as if they were British or Canadian ships. 43 V. c. 29, s. 11.

DUTY OF MASTERS; LIABILITY OF OWNERS OF SHIPS.

10. In every case of collision between two ships, the person in charge of each ship shall, if and so far as he can do so without danger to his own ship and crew, render to the other ship, her master, crew and passengers, such assistance as is practicable, and as is necessary in order to save them from any danger caused by such collision; and shall also give to the master or other person in charge of the other ship the name of his own ship and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound; and if he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect or default (*c.*) Duties of masters of vessels in case of collision to render assistance. 43 V. c. 29, s. 12, *part.* Penalty for default.

11. Every master or person in charge of a British or Canadian ship, who fails, without reasonable cause, to render such assistance, or to give such information as aforesaid, is guilty of a misdemeanour; and if he is a certificated officer under Canadian authority, an inquiry Further penalty

(x) *The Queen*, 2 A. & E. 354; *The Adriatic*, 33 L. T. 102.

Sec. 12. into his conduct may be held, and his certificate may be cancelled or suspended. 43 V. c. 29, s. 12, *part*.

Liability of owners limited.

12. The owners of any ship, whether British, Canadian or foreign, shall not, whenever all or any of the following events occur without their actual fault or privity, that is to say:—

Loss of life or, etc.

(a) When any loss of life or personal injury is caused to any person being carried in such ship;

Damage to goods.

(b) When any damage or loss is caused to any goods, merchandise or other things whatsoever on board any such ship;

Improper navigation.

(c) When any loss of life or personal injury is, by reason of the improper navigation of such ship as aforesaid, caused to any person in any other ship or boat;

Loss, etc., to other ship, etc.

(d) When any loss or damage is, by reason of the improper navigation of such ship as aforesaid, caused to any other ship or boat, or to any goods, merchandise or other things whatsoever on board any other ship or boat,—

Extreme amount recoverable.

Be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise or other things, nor in respect of loss or damage to ships, goods, merchandise or other things, whether there is in addition loss of life or personal injury or not, to an aggregate amount exceeding thirty-eight dollars and ninety-two cents for each ton of the ship's tonnage,—such tonnage to be the registered tonnage in the case of sailing-ships; and in the case of steam-ships the gross tonnage without deduction on account of engine-room (y);

\$38.92 per ton.

How calculated.

2. In the case of any British or Canadian ship, such tonnage shall be the registered or gross tonnage, according to the British or Canadian law, and in the case of a foreign ship which has been or can be measured according

(y) *The Heather Belle*—*The Fastnet*, 3 E. C. R. (Can.) 40; *The Palermo*, 10 P. D. 21; *The Victoria*, 13 P. D. 125; *The Umbilo*, 1891, P. 118; *Sewell v. B. C. T. & T. Co.*, 9 S. C. R. 527.

to British or Canadian law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship; Secs. 13-14.

3. In the case of any foreign ship which has not been and cannot be measured according to British or Canadian law, the deputy of the Minister of Marine shall, on receiving from or by direction of the court hearing the case, such evidence concerning the dimensions of the ship as it is found practicable to furnish, give a certificate under his hand, stating what would, in his opinion, have been the tonnage of such ship if she had been duly measured according to Canadian law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship. 43 V. c. 29, s. 13. Tonnage how calculated in certain cases.

13. Insurances effected against any or all of the events enumerated in the section next preceding, and occurring without such actual fault or privity as therein mentioned, shall not be invalid by reason of the nature of the risk. 43 V. c. 29, s. 14. As to insurance in such cases.

14. If Her Majesty, acting on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council annuls or modifies any of the regulations for preventing collisions on navigable waters, which, by Order of Her Majesty in Council of the fourteenth day of August, 1879, were substituted for those theretofore in force for like purposes in the United Kingdom, or makes new regulations in addition thereto or in substitution therefor, the Governor in Council may, from time to time, make corresponding changes, as respects Canadian waters, in the regulations contained in the second section of this Act or any that may be substituted for them,—or may suspend them or any of them, and make others in their stead,—or may revive all or any of the regulations in the Act of the Parliament of Canada passed in the thirty-first year of Her Majesty's reign, and intituled "*An Act respecting the Navigation of Canadian Waters*," as he deems best for insuring the correspondence of the regulations of Her Majesty in Council with those of the Governor in Council. Provision in case of alteration of imperial regulations.

V. c. 20, s. 2.

Secs. 1, 2.

LIMITATION OF LIABILITY IN CASES OF DAMAGE BY
COLLISION.

In addition to the statutory provision set forth, *ante* p. 252, limiting the liability of owners of ships for loss or damage occasioned by the improper navigation of a ship corresponding with part 9, *M. S. Act* (Imp.) except in some particulars, there is also a limitation in case of loss of goods contained in the—

Act respecting the liability of Carriers by Water. R. S. C. c. 82, as follows :—

Interpretation 1. In this Act, unless the context otherwise requires,—

"Goods." (a) The expression "goods" means and includes goods wares, merchandise, and articles of any kind whatsoever ;

"Valuable securities." (b) The expression "valuable securities" includes every document forming the title or evidence of the title to any property of any kind whatsoever. 37 V. c. 25, s. 3.

Carriers by water to receive and convey passengers and goods. 2. Carriers by water shall, at the times and in the manner and on the terms of which they have respectively given public notice, receive and convey according to such notice, all persons applying for passage, and all goods offered for conveyance, unless in either case there is reasonable and sufficient cause for not doing so :

Responsibility as to goods received by and delivered to them. 2. They shall be responsible not only for goods received on board their vessels, but also for goods delivered to them for conveyance by any such vessel, and they shall be bound to use due care and diligence in the safe keeping and punctual conveyance of such goods, subject to the provisions hereinafter made :

Loss or damage. 3. They shall be liable for the loss of or damage to goods intrusted to them for conveyance as aforesaid :

Proviso : exception in certain cases. 4. Provided, that they shall not be liable to any extent whatsoever to make good any loss or damage happening without their actual fault or privity, or the fault or neglect of their agents, servants or employees,—

(a) To any goods on board any such vessel, or delivered to them for conveyance therein, by reason of fire or the dangers of navigation ; Sec. 3.
Fire, etc.

(b) Arising from any defect in or from the nature of the goods themselves,—or from armed robbery or other irresistible force ; Nature of goods.
Robbery.

(c) To any gold, silver, diamonds, watches, jewels or precious stones, money or valuable securities or article of great value not being ordinary merchandise, by reason of any robbery, theft, embezzlement, removal or secreting thereof, unless the true nature and value thereof has, at the time of delivery for conveyance, been declared by the owner or shipper thereof to the carrier or his agent or servant, and entered in the bill of lading or otherwise in writing. 37 V. c. 25, s. 1. Valuables, unless value has been declared.

3. Carriers by water shall be liable for the loss of or damage to the personal baggage of passengers by their vessels ; and the oath or affirmation of any such passenger shall be *prima facie* evidence of the loss of or damage to such articles, and of their value : Provided that such liability shall not extend to any greater amount than five hundred dollars, or to the loss of or damage to any such valuable articles as are mentioned in the next preceding section, unless the true nature and value of such articles so lost or damaged have been declared and entered, as provided by the said section. 37 V. c. 25, s. 2. As to loss or damage to personal baggage of passengers.
Liability limited.

Improper Navigation.—R. S. C. c. 79, s. 12, *ante*, p. 252 ; and 25 & 26 V. (Imp.) c. 63, s. 54, s-s. 4. These words are not restricted to the negligent navigation of a vessel by her master and crew, for the statute includes all damage wrongfully done by a ship to another while it is being navigated, where the wrongful act is due to the negligence of a person for whom the owner is responsible. Therefore, when a vessel, owing to the negligence of a person on shore in overlooking the machinery, steered so badly that she came into collision with another vessel, and

was held to blame, the owners of such ship were entitled to a decree limiting their liability (z).

Limitation of Liability.—Actions of limitation of liability are not in ordinary cases instituted until after proceedings have been commenced to recover damages from the persons who seek to limit their liability, and where this is the case, those who have taken such proceedings should be named in the writ as defendants to the action (a).

The ships S. and V. came into collision; both ships were damaged, but the V. was sunk with her cargo and lost. In an action by the owners of the V., and counter-claim by the owners of the S., both ships were held to blame and condemned to pay the moiety of each others damage. The damage payable by the S. was £14,000, and that payable by the V. was £2,000. The owners of the S. then brought action in Chancery for limitation of their liability, and paid into court £5,212, the aggregate amount of £8 a ton on her registered tonnage. Held, that the owners of the V. must prove for £14,000 against the fund in court, and must pay the £2,000 in full to the owners of the S. Held, also, by Jessel, M.R., that the owners of the V. and the owners of the cargo, or the underwriters in their place, and the master and crew of the same ship, must prove *pari passu* against the fund in respect of the moiety of their respective losses (b).

The owners of ships not registered as British ships at the time of collision, are not entitled to take advantage of the limited liability clauses (c).

The action for limitation of liability, is like other actions, commenced by issue of a writ of summons, but the

(z) *The Warkworth*, 9 P. D. 145, C. A.

(a) Wms. & B. 372.

(b) *The Chapman v. Royal Netherlands Steam Navigation Co.*, 4 P. D. 157 C. A. See also *The City of Manchester*, 5 P. D. 221 C. A.; *The Mary Ann*, 7 P. D. 201; *The Karo*, 13 P. D. 24, and *The Victoria*, *Ib.* 126; both vessels to blame, no costs.

(c) *Sewell v. British Columbia Towing and Transportation Co.* 9 S. C. R. (Can.) 527. See also *The Georgian Bay Transportation Co. v. Fisher*, 5 A. R. (Ont.) 383.

limitation may in an action for damage, be claimed either by a counter-claim, or in the statement of defence; or if the defendant admits the ship was to blame, he may apply on motion to stay proceedings and limit the liability to the statutory sum. Proceedings are then usually stayed on paying the amount into court and payment of the taxed costs of the plaintiff. The usual practice is to claim the benefit of the statutory limitation of liability after it has been decided that the ship is to blame. In that case the claimant issues a writ in a fresh action, and delivers a statement of claim, stating ownership, and that the ship has been found to blame, and alleging that the owners were not privy to the negligence which caused the collision; showing also the tonnage of the ship, and that the amount payable in respect thereof has been paid into court, and that the owners claim to have a decree limiting their liability to the amount paid into court. The action is set down for trial. The facts are verified by the ship's register, and by affidavit. Upon a decree being made decreeing such limitation of liability, advertisements are issued for creditors in respect of such damage to send in claims within a limited time, usually six weeks. The defendant in a limitation suit may require an undertaking for the costs of the limitation suit (*d*).

The amount of such liability may, in an action of damage, be paid into court to obtain the release of the ship, without thereby admitting any liability (*e*).

It is no longer necessary to aver that the plaintiff's vessel is under the arrest of the court, or that she has been released on bail, since Admiralty has now in actions of limitation of liability the same jurisdiction as the Court of Chancery possessed before the coming into operation of the Judicature Act in England (*f*).

The benefit of the limited liability can be claimed by any vessel without admitting responsibility (*g*).

(*d*) Wms. & B. 372, *et seq.*; and Smith's Ad. Pr. 4th Ed. 149.

(*e*) *The Amalia*, Br. & L. 151; 8 L. T. N. S. 805; *The Sisters*, 1 P. D. 281.

(*f*) Wms. & B. 372, 374.

(*g*) *The Amalia*, Br. & L. 151, 155, 314.

The limitation does not apply to interest (*h*).

In an action to limit their liability the plaintiffs paid into court the amount of their statutory liability at the rate of £15 per ton, the amount so paid in was insufficient to satisfy in full the claims against them in respect of loss of life and loss of goods, and the claimants in respect of loss of life were held to be entitled to be paid out of the money in court an amount equal to £7 per ton, and that they and the claimants in respect of loss of goods must rank *pari passu* against the balance of £8 per ton (*i*).

BOTTOMRY.

Bottomry is a contract by which in consideration of money advanced for the necessities of a ship, to enable her to proceed on her voyage, the keel or bottom, *pars pro toto* is made liable for the repayment of the money in the event of the safe arrival of the ship at its destination. Not only the ship but the freight and cargo may be the subject of hypothecation. When the cargo alone is hypothecated it is termed *respondentia* (*j*).

In all cases it is on the necessity of obtaining what is absolutely required for the ship or cargo that the contract is based. It is necessity alone that supports bottomry bonds, the absence of necessity is their undoing (*k*).

Any shipmaster in a foreign country, is, for some purposes, the agent of the owners and for some purposes the agent of the freighters. The agency spoken of is devolved upon him by the law of his flag. The same law that confers this authority ascertains its limits; and the flag at the mast head is notice to all the world of the extent of such power to bind the owners or the freighters by such acts (*l*).

(*h*) *The Amalia*, *supra*.

(*i*) *The Victoria*, 13 P. D. 125.

(*j*) *Wms & B.* 43.

(*k*) *The Nelson*, 1 Hagg. 169, 175; *The Prince of Saxe Coboury*, 3 Moo. P. C. 1.

(*l*) *MacLachlan's Mer. Shipping*, 4th Ed., 174-5.

Where the master of a French ship carrying an English cargo to Liverpool hypothecated ship, freight and cargo at a port of distress, it was held that he was justified in doing so by the law of his flag, and that the English merchant in making the charter, impliedly consented to be bound by that law (*m*).

In addition to the names of the parties, and the amount of the loan and interest the contract or bond contains, the name of the ship, and the voyage during which the risk is to be incurred (*n*).

It must be clearly expressed that the loan is only to be repaid in the event of the successful termination of the voyage, (*o*) not if she is lost on the voyage by the perils of the sea, and that the vessel is hypothecated. The occasion of the loan ought also to be expressed, although it is not necessary that the court should gather this from the instrument (*p*).

The court will not in a well founded claim enter into a minute criticism of the language of the bond (*q*).

If personal security is available the bond is invalid (*r*).

The master must in every case when it is reasonably practicable, communicate with the owners before borrowing, and should inform them that hypothecation is contemplated (*s*).

And a separate communication to the owners of the cargo, when practicable is absolutely necessary (*t*): and that although by the law of the country to which the ship belongs such communication is unnecessary. In an action where the defendants pleaded that the master might have communicated with them the owners before hypothecating the cargo, the plaintiff replied that the ship was an Italian

(*m*) Maclellan's Mer. Shipping, 4th Ed., 174, 175.

(*n*) *Western v. Wildey*, Skinner, 152; *The Jane*, 1 Dods., 431.

(*o*) *The Nelson*, 1 Hagg. 109; *The Emancipation*, 1. W. Rob. 124; *The Royal Arch*, Sw. 281.

(*p*) Wms. & B. 59.

(*q*) *The Alexander*, 1 Dods. 280.

(*r*) *The Hero*, 2 Dods. 139.

(*s*) *The Oriental*, 7 Moo. P. C. 398, but see *The Bonaparte*, 8 Moo. P. C. 488.

(*t*) *The Hambury*, 2 Moo. P. C. N. S. 289.

ship, and that by the law of Italy such communication was unnecessary. The reply was on demurrer held bad (*u*).

Foreign Law.—The question by what law the validity of the transaction should be determined in cases where the bond is granted by the master of a foreign ship in this country, or abroad, or by the master of a British ship abroad, has given rise to much discussion. And although it appears now to be settled that purely maritime contracts are in many respects to be regulated by the law of the flag, it by no means follows that the Admiralty Court is bound to lend its process to enforce a bond in a case where there is an absence of proof of the validity of the bond such as is required by the law of England. Until the decision of the Court of Appeal in the case last referred to, there was no case in which Admiralty process in England had been allowed to be used to give effect to a bond not valid according to the law maritime as administered in this country, and in many cases the court had declared its unwillingness to interfere to enforce the rules of foreign law which conflict with the principles of jurisprudence recognized in England (*v*).

Lien, and Priorities.—The lien of a bottomry bond holder ranks after liens for damages, wages, and subsequent salvage, subsequent towage, and subsequent pilotage. But where the damage has been done before the bond was given, and the holder of the bond is a stranger who has in good faith advanced money for repairs, it seems that he has a lien to the extent of the increased value of the vessel arising from the repairs, which is entitled to precedence of the claim for damages. Wages earned on the same voyage on which the bond is given, whether before or after the giving of the bond are to be preferred to the bond. But a master who has given a bottomry bond, binding himself, ship, and freight, cannot claim wages, to the prejudice of the bondholder. But this rule is not to be pushed beyond the exigency of the case. Where a suit is instituted by a bondholder, and seamen make a claim against the ship for

(*u*) *The Gaetano and Maria*, 7 P. D. 1.

(*v*) *Wms. & B.* 60.

wages which he does not dispute, if the bondholder wishes to save the expense of a separate suit for wages, the proper course for him to adopt is to apply to the court to sanction the immediate payment of the wages to the seamen by him, then the court will afterwards order the repayment of the amount so paid by him out of the proceeds. But if the bondholder pays the wages without the sanction of the court he does so at his own peril. The claim of a bondholder takes precedence of a possessory lien for necessities afterwards acquired by a shipwright, and a claim for necessities supplied before the bond, even though the claim for necessities may have been pronounced for before the bond is put in suit. It also takes precedence of the claim of a mortgagee, and the bondholder is under no obligation to communicate the existence of the bond to the mortgagee, nor is his claim affected by the owner of the ship concealing the existence of the bond from the mortgagee (*w*).

In the case of a respondentia bond, where the cargo is transhipped after the bond is given, and the subsequent carrying on of the cargo is essential to make it available for the holder of the bond or anybody else, the freight payable for carrying on the cargo will be regarded as in the nature of salvage, and the lien of the master of the ship which has carried on the cargo, for such freight will take precedence of the claim of the bondholder. So under similar circumstances where a loss has been incurred for the general benefit of the ship and cargo, so long as the master retains his lien for general average, the claim of the bondholder will be treated as subject to the claim on the cargo for general average (*x*).

Where several bonds have been given on the same voyage, that which is last in point of date must be first paid, since without the subsidiary aid of the later bond the property would be totally lost, both to the owners and the former bondholders. A valid bottomry bond gives the holder a maritime lien on the subject hypothecated. Like

(*w*) *Wms. & B.* 64.

(*x*) *Ibid.* 65

other maritime liens this can only be enforced by proceedings in Admiralty in an action *in rem*. Should the master seek to render the owners personally liable by the terms of the bond, the court will refuse to give effect to that portion of the instrument. It seems, however, that the master may render himself personally liable on the bond (*y*).

A bottomry bond given upon the ship, freight and cargo must be enforced against the ship and freight before it can be enforced against the cargo (*z*).

A premium or high rate of interest is usual on bottomry or *respondentia* bonds, and the absence or presence of the premium and the rate of interest are considered in determining whether bottomry was intended or not (*a*).

The court has power to reduce the amount payable under a *respondentia* bond (*b*).

If a bond be declared invalid by the Admiralty Division (Eng.), no other court has power to enforce the claim, and the lender loses his money altogether (*c*).

FORMS FOR BOTTOMRY AND RESPONDENTIA (*d*).

BOTTOMRY BOND ON SHIP AND FREIGHT.

Know all men by these presents, that I, A. B., master of the ship *Albany*, of London, am held and firmly bound unto C. D., of Bombay, merchant, in the sum of lawful British money, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, and also the said ship, her tackle, apparel, and furniture, and the freight to be

(*y*) Wms. & B. 60.

(*z*) *The Bonaparte*, 3 W. Rob. 202.

(*a*) *The Emancipation*, 1 W. Rob. 127.

(*b*) *The Pontida*, 9 P. D. 103, 177.

(*c*) *Stainbank v. Shepherd*, 13 C. B. 418; Smith's Ad. Pr. 4th Ed., 99.

(*d*) MacLachlan on Shipping, 4th Ed., 901; Abbott, 13th Ed., 1245.

earned by her on the voyage after mentioned, firmly by these presents. Sealed with my seal. Dated this day of one thousand eight hundred and

Whereas the said ship is lately arrived in the roadstead of Bombay from London, having on her said voyage sustained damage [*describe the damage*], and being in want of repairs and provisions to enable her to proceed on her voyage from Bombay to London, for which port she is now bound and about to return, and the said A. B., in order to be enabled to procure the said repairs and provisions, and to pay for the same and for the lawful and necessary disbursements and expenses of the said ship at the said port of Bombay, hath requested the said C. D. to lend the sum of for the aforesaid purposes, and the said C. D. hath accordingly lent the said sum for the aforesaid purposes, on the hazard and adventure of the said vessel on her said intended voyage from Bombay to London.

Now the condition of the above obligation is such, that if the said ship do and shall with all reasonable and convenient speed, sail from the port of Bombay aforesaid, on the said intended voyage to London, and that without deviation (the perils, damages, accidents and casualties of the seas and navigation excepted); and if the above bounden A. B., his heirs, executors, or administrators, or the owners of the said ship, do and shall within ten days after the said vessel shall arrive at London aforesaid, well and truly pay or cause to be paid unto the said C. D., his agent, attorney, executors, administrators, or assigns, the said sum of lawful British money, together with pounds per centum, bottomry premium thereon; or if on the said voyage the said vessel shall be utterly lost, cast away, or destroyed, in consequence of fire, enemies, pirates, storms, or other the unavoidable perils, dangers, accidents, or casualties of the seas and navigation, to be sufficiently shown or proved by the said A. B., his executors or administrators, or by the owners of the said ship, their executors or administrators; then the above written bond or obliga-

tion or bond to be void ; otherwise to remain in full force and virtue.

Signed, sealed, and delivered, where
no stamped paper is to be had, in } A. B. (Seal).
the presence of

BOTTOMRY BILL, ON SHIP, FREIGHT [AND CARGO].

To all men to whom these presents shall come. I, A. B., of Bengal, [part owner and] master of the ship called the *Exeter*, of the burden of five hundred tons and upwards, now riding at anchor in Table Bay, at the Cape of Good Hope, send greeting :

Whereas I, the said A. B., [part owner and] master of the aforesaid ship called the *Exeter*, now in prosecution of a voyage from Bengal to the port of London, having put into Table Bay for the purpose of procuring provisions and other supplies necessary for the continuation and performance of the voyage aforesaid, am at this time necessitated to take up upon the adventure of the said ship called the *Exeter*, the sum of £1,000 lawful monies of Great Britain, for setting the said ship to sea, and furnishing her with provisions and necessities for the said voyage, which sum C. D., of the Cape of Good Hope, master attendant, hath at my request lent unto me, and supplied me with at the rate of £1,220 sterling for the said £1,000, being at the rate of £122 for every £100, advanced as aforesaid, during the voyage of the said ship from Table Bay to London. Now know ye that I, the said A. B., by these presents, do, for me, my executors and administrators, covenant and grant to and with the said C. D., that the said ship shall, [with the first convoy that shall offer for England] [or, with all reasonable and convenient speed] after the date of these presents, sail and depart for the port of London, there to finish the voyage aforesaid, and that, without deviation during the course thereof (the perils, damages, accidents and casualties of the seas and navigation excepted). And I, the said A. B., in consideration of the sum of £1,000 sterling

to me in hand paid by the said C. D. at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said ship, the tackle and apparel of the same, and also the freight of the said ship which is or shall become due for the aforesaid voyage from Bengal to the port of London, [and also the cargo shipped on board the said vessel for the voyage aforesaid] to pay unto the said C. D., his executors, administrators or assigns, the sum of £1,220 of lawful British money, within thirty days next after the safe arrival of the said ship at the port of London from the same intended voyage.

And I, the said A. B., do, for me, my executors and administrators, covenant and grant to and with the said C. D., his executors and administrators by these presents, that I, the said A. B., at the time of sealing and delivering of these presents, am [a true and lawful part owner and] master of the said ship, and have power and authority to charge and engage the said ship with her freight [and cargo] as aforesaid, and that the said ship, with her freight [and cargo], shall at all times, after the said voyage, be liable and chargeable for the payment of the said £1,220 according to the true intent and meaning of these presents.

And lastly, it is hereby declared and agreed by and between the said parties to these presents, that in case the said ship shall be utterly lost, miscarry, be cast away, or otherwise destroyed in consequence of fire, enemies, pirates, and any other perils and dangers of the seas and navigation, before her arrival at the said port of London from the said intended voyage, that then the payment of the said £1,220 shall not be demanded, or be recoverable by the said C. D., his executors, administrators, or assigns, but shall cease and determine, and the loss thereby be wholly borne and sustained by the said C. D., his executors and administrators, and that then and from thenceforth every act, matter and thing herein mentioned on the part and behalf of the said A. B., shall be void, anything herein contained to the contrary notwithstanding.

In witness whereof the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others to be null and void.

At the Cape of Good Hope, this fifteenth day of November, in the year of our Lord one thousand eight hundred and

| | | | |
|----------|---------|-------|---------|
| Witness, | { E. F. | A. B. | (L. S.) |
| | { G. H. | | |
| | { I. K. | | |

RESPONDENTIA BOND.

Know all men by these presents, that I, A. B., master of the ship *Albany*, am held and firmly bound unto C. D., of Odessa, merchant, in the sum of lawful British money, to be paid to the said C. D., his certain attorney, or his executors, administrators, or assigns, to which payment I bind myself firmly by these presents. Sealed with my seal. Dated this day of one thousand eight hundred and

Whereas the said ship *Albany*, having laden on board a cargo of corn, was accidentally stranded and suffered great damage, and was taken into the harbour of Odessa by salvors, and her cargo discharged, some being damaged; and whereas, great expense for salvage and other charges were necessarily incurred, and were charged on the said cargo, and which the said master was unable to pay; and whereas the said C. D. did contract and agree with the said A. B. to advance the sum of money necessary to enable him to pay the same charges and expenses upon the goods and merchandise, lately the cargo of the said ship *Albany*, to be re-shipped and forwarded from Odessa to their destination, that is to say, to the port of London in England, it being expressly agreed before any part of such advance was made, that such advance should be by way of *respondentia* on the said cargo on the voyage last aforesaid; and whereas under and pursuant to the agreement last aforesaid the sum of was advanced as aforesaid, and a

part of the said merchandise was laden at Odessa in and board the ship *Otseonthé*, to be carried to London aforesaid, in a voyage to be thereafter commenced and prosecuted by the said ship *Otseonthé*; and while the process of lading the same was going on, the said ship *Otseonthé* took fire, and together with a part of the said merchandise then on board was destroyed, and the residue of the said merchandise on board was so damaged as to render a sale thereof necessary.

Now, in pursuance of the original agreement, and in execution of the same, so far as the execution thereof has not been rendered impossible by the act of God, and without intending to displace or prejudice any claim, right, or lien of the said C. D., in or to what was saved from the merchandise so shipped on board the *Otseonthé*, but on the contrary expressly admitting and declaring that according to the understanding of the undersigned A. B., in equity and good conscience, the same is to stand affected and bound unto him the said C. D., in like manner as the residue of the said goods and merchandise which have now been laden at Odessa on board the ship called the *Tempest*, and bound for London, are hypothecated and assigned over by way of *respondentia* security, as the same are hereby declared to be hypothecated and assigned over for that end, and that the same are to be delivered to no other use whatsoever.

Now the condition of the above written obligation is such, that if the said ship *Tempest* do and shall depart from Odessa, and sail to and arrive at London, and if the said A. B. shall pay unto the said C. D., or his legal representatives, within ten days after such arrival, the full sum of

together with a premium thereon of

pounds per centum; or if in the said voyage an utter loss of the said ship by any perils of the sea which are insured against under policies, a form of which is hereto annexed, shall unavoidably happen, and the said A. B. or those for whom he acts shall well and truly, without delay, account with the said C. D., or his representatives or assigns, for the just salvage which shall be received from and on account of the said hypothecated merchandise, and shall

well and truly pay or deliver the same unto him or them, and shall not deliver the said merchandise to any other use whatsoever, without payment of the principal and interest, and premium due on this bond. Then this obligation shall be void, otherwise to remain in full force.

Signed, sealed, and delivered, where no stamped paper is to be had, in the presence of

| | |
|-----|---------------|
| } | A. B. (Seal.) |
| (e) | |

SEAMEN'S WAGES, AND MASTER'S WAGES AND DISBURSEMENTS.

MODE OF RECOVERY—STATUTORY PROVISIONS.

The Inland Seamen's Act, R. S. C. c. 75—defining (s. 2) expressions used therein, viz.:—

(a) The expression "ship" includes every description of vessel used in navigation, not propelled by oars;

(b) The expression "master" includes every person having command or charge of a ship, except a pilot;

(c) The expression "seaman" includes every person employed or engaged in any capacity on board any ship, except masters and pilots;

(d) The expression "Consular officer" includes Consul-General, Consul, and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul or Vice-Consul.

(e) The expression "the Minister" means the Minister of Marine and Fisheries;

(f) The expression "ship subject to the provisions of this Act" includes every ship registered in Canada propelled by steam, and of more than twenty tons, registered tonnage, or propelled otherwise than by steam, and of more than fifty tons registered tonnage, and employed in navigating the inland waters of Canada above the harbour of Quebec, and excepting barges and scows navigating rivers and canals from the operation of the Act—provides, amongst other things, as to jurisdiction over wages, as follows:—

(e) MacLachlan on Shipping, 4th Ed., p. 991.

MODE OF RECOVERING WAGES.

Secs. 30-32.

30. Any seaman or apprentice belonging to any ship subject to the provisions of this Act, or any person duly authorized on his behalf, may sue in a summary manner before any judge of the Superior Court for Lower Canada, judge of the sessions of the peace, judge of a county court, stipendiary magistrate, police magistrate, or any two justices of the peace acting in or near the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any master or owner or other person upon whom the claim is made is or resides, for any amount of wages due to such seaman or apprentice not exceeding \$200 over and above the costs of any proceeding for the recovery thereof, as soon as the same becomes payable; and such judge, magistrate or justices may, upon complaint on oath made to him or them by such seaman or apprentice, or on his behalf, summon such master or owner, or other person to appear before him or them to answer such complaint.

Seamen may sue for wages in a summary manner.

Summons.

31. Upon the appearance of such master or owner, or in default thereof, on due proof of his having been so summoned, such judge, magistrate or justices may examine upon the oath of the respective witnesses of the parties, if there are any, or upon the oath of either of the parties, in case one of the parties requires such oath from the other, before such judge, magistrate or justices, touching the complaint and amount of wages due, and may make such order for the payment thereof, as to such judge, magistrate or justices appears reasonable and just; and any order made by such judge, magistrate or justices shall be final.

Judges may order payment

32. If such order is not obeyed within twenty-four hours next after the making thereof, such judge, magistrate or justices may issue a warrant to levy the amount of the wages awarded to be due, by the distress and sale of the goods and chattels of the person on whom such order is made,—paying to such person the overplus of the produce of the sale, after deducting therefrom all the charges and

Warrant of distress may be issued.

Secs. 33-35. expenses incurred by the seaman or apprentice in the making and hearing of the complaint, as well as those incurred by the distress and levy, and in the enforcement of the order.

If sufficient distress not found.

33. If sufficient distress cannot be found, such judge, magistrate or justices may cause the amount of such wages and expenses to be levied on the ship in respect of the service on board which the wages are claimed, or the tackle and apparel thereof; and if such ship is not within the jurisdiction of such judge, magistrate or justices, they may cause the person on whom the order for payment is made to be apprehended and committed to the common gaol of the locality, or if there is no gaol there, then to that which is nearest to the locality, for a term not exceeding three months, and not less than one month, under each such condemnation.

Restrictions on suits for wages in superior courts.

34. No suit or proceedings for the recovery of wages under the sum of two hundred dollars shall be instituted by or on behalf of any seaman or apprentice belonging to any ship subject to the provisions of this Act, in any court of Vice-Admiralty, or in the Maritime Court of Ontario (*f*), or in any superior court, unless the owner of the ship is insolvent within the meaning of any Act respecting insolvency, for the time being in force in Canada, or unless the ship is under arrest or is sold by the authority of any such court as aforesaid, or unless any judge, magistrate or justices, acting under the authority of this Act, refer the case to be adjudged by such court, or unless neither the owner nor the master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

If suits are brought unnecessarily before superior court.

35. If any suit for the recovery of a seaman's wages is instituted against any such ship, or the master or owner thereof, in any court of Vice-Admiralty, or in the Maritime Court of Ontario (*g*), or in any superior court in Canada, and it appears to the court, in the course of such suit, that the plaintiff might have had as effectual a remedy for the

(*f*) Now abolished, *vide ante*, p. 9.

(*g*) *Ibid.*

recovery of his wages by complaint to a judge, magistrate Secs. 35a, 36. or two justices of the peace under this Act, then the judge shall certify to that effect, and thereupon no costs shall be awarded to the plaintiff (h).

By 56 V. c. 24 (Can.); assented to 1st April, 1893, it is provided as follows:—

1. *The Inland Waters Seamen's Act* is amended by adding the following section thereto immediately after section thirty-five:—

"35A. The master of any ship subject to the provisions of this Act shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages, and for the recovery of disbursements properly made by him on account of the ship, and for liabilities properly incurred by him on account of the ship, as by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and if, in any proceeding in any court possessing admiralty jurisdiction in any of the said provinces touching the claim of a master to wages, any right of set-off or counter claim is set up, such court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance which is found to be due."

Master's remedies for wages and disbursements.

35. The time for instituting summary proceedings Limitation of time in summary proceedings. under this Act shall be limited as follows, that is to say:—

(b) No order for the payment of money shall be made in any summary proceeding under this Act, unless such proceeding is commenced within six months after the cause of complaint arises, or—if both or either of the parties happen, during such time, to be out of Canada—unless the same is commenced within six months after they both first happen to arrive or to be at one time within Canada.

The Seamen's Act, 1873, R. S. C. c. 74, applicable (s. 3), to the Provinces of Quebec, Nova Scotia, New Brunswick,

(h) The rule placing the question of costs in the discretion of the court R. 132), having the force of a statute, impliedly repeals all provisions requiring the judge to certify as to costs. Wms. & B. 464, and *ante*, p. 62. Admiralty has jurisdiction over all claims for wages. Smith's Ad. Prac., 4th Ed., 1892, p. 79.

Sec. 36.

Prince Edward Island and British Columbia only, in which Act by s. 2 the expression—

"The said Provinces" means the Provinces of Quebec, Nova Scotia, New Brunswick, Prince Edward Island and British Columbia:—

"Ship" includes every description of vessel used in navigation not propelled by oars:—

"Ships belonging to Her Majesty" includes ships the cost of which has been defrayed out of the Consolidated Revenue Fund of Canada, and ships described as the property of Canada, by the one hundred and eighth section of "*The British North America Act, 1867*:"—

"Canadian Foreign Sea-going Ship" includes every ship registered in either of the said Provinces, employed in trading or going by sea between some place or places in Canada, and some place or places out of Canada:—

"Canadian Home-trade Ship" includes every ship registered in either of the said Provinces, employed in trading or going from any place or places in any of the said Provinces to any other place or places in any other of the said Provinces:—

"Master" includes every person (except a pilot) having command or charge of a ship:—

"Seaman" includes every person (except masters pilots and apprentice duly indentured and registered) employed or engaged in any capacity on board any ship:—

"Consular Officer" includes Consul-General, Consul and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul or Vice-Consul:—

"The Board of Trade" means the Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations:—

"The Minister" means the Minister of Marine and Fisheries,—

and by which so much of "*The Merchant Shipping Act, 1854*," and of any Act amending the same and

Repealing
clause.

forming and to be construed as part thereof, relating to Secs. 52, 53.
ships registered in either of the said Provinces, as is incon- Imp. Stat. 17
sistent with it is repealed,—by which also (s. 4) the Act is and 18 V. c.
not to apply except as therein specially provided, to 104.
ships belonging to Her Majesty,—provides among other
things, as to jurisdiction over wages, as follows:—

MODE OF RECOVERING WAGES.

52. Any seaman or apprentice belonging to any ship Seamen may
registered in either of the said Provinces, or any person sue for wages
duly authorized on his behalf, may sue in a summary in a summary
manner before any judge of the sessions of the peace, any manner,
judge of a county court, stipendiary magistrate, police M. S. A. s. 188.
magistrate, or any two justices of the peace acting in or
near the place at which the service has terminated, or at
which the seaman or apprentice has been discharged, or at
which any master or owner or other person upon whom
the claim is made is or resides, for any amount of wages
due to such seaman or apprentice not exceeding two
hundred dollars over and above the costs of any proceed-
ing for the recovery thereof, as soon as the same becomes
payable; and such judge, magistrate, or justices may, upon
complaint on oath to be made to him or them by such sea-
man or apprentice, or on his behalf, summon such master
or owner, or other person to appear before him or them to
answer such complaint.

53. Upon appearance of such master or owner, or in Order for pay-
default thereof, on due proof of his having been so sum- ment of wages.
moned, such judge, magistrate, or justices may examine
upon the oath of the respective witnesses of the parties (if
there be any), or upon the oath of either of the parties,
in case one of the parties should require such oath from
the other, before such judge, magistrate or justices, touch-
ing the complaint and amount of wages due, and may make
such order for the payment thereof, as to such judge, mag-
istrate or justices appears reasonable and just; and any
order made by such judge of the sessions of the peace

Secs. 54-56. judge of a county court, stipendiary magistrate, police magistrate or justices shall be final.

Warrant of
distress may
be issued.

54. If such order is not obeyed within twenty-four hours next after the making thereof, such judge, magistrate or justices, may issue a warrant to levy the amount of the wages awarded to be due, by the distress and sale of the goods and chattels of the party on whom such order is made, rendering to such party the over-plus (if any remains) of the produce of the sale, after deducting therefrom all the charges and expenses incurred by the seaman or apprentice in the making and hearing of the complaint, as well as those incurred by the distress and levy, and in the enforcement of the order.

If sufficient
distress not
found.
M. S. Act, s. 523.

55. And in case sufficient distress cannot be found, such judge, magistrate or justices may cause the amount of such wages and expenses to be levied on the ship in respect of the service on board which the wages are claimed, or the tackle and apparel thereof; and if such ship is not within the jurisdiction of such judge, magistrate or justices, then they may cause the party on whom the order for payment is made to be apprehended and committed to the common gaol of the locality, or if there be no gaol there, then to that which is nearest to the locality, for a time not less than one, nor more than three months, under each such condemnation.

Restrictions
on suits for
wages in
Superior
Courts.
M. S. A. s. 189.

56. No suit or proceedings for the recovery of wages under the sum of two hundred dollars shall be instituted by or on behalf of any seaman or apprentice belonging to any ship registered in either of the said Provinces in any court of Vice-Admiralty, or in any superior court of record in either of the said Provinces, unless the owner of the ship is insolvent within the meaning of any Act respecting insolvency for the time being in force in Canada, or unless the ship is under arrest or is sold by the authority of any such court as aforesaid, or unless any judge, magistrate or justices, acting under the authority of this Act, refer the case to be adjudged by such court, or unless neither the owner nor

the master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore. Secs. 57-59.

57. If any suit for the recovery of a seaman's wages is instituted against any such ship or the master or owner thereof, in any court of Vice-Admiralty or in any court of record in either of the said Provinces, and it appears to the court, in the course of such suit, that the plaintiff might have had as effectual a remedy for the recovery of his wages, by complaint to a judge of the sessions of the peace, judge of the county court, stipendiary magistrate, police magistrate, or two justices of the peace under this Act, then the judge shall certify to the effect, and thereupon no costs shall be awarded to the plaintiff (a).

If suits are brought unnecessarily before Superior Court, no costs to plaintiff.

58. No seaman belonging to any Canadian foreign sea-going ship, who is engaged for a voyage or engagement which is to terminate in either of the said provinces shall be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as herein required, and with the written consent of the master, or prove such ill usage on the part of the master or by his authority, as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but if any seaman on his return to either of the said provinces prove that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding eighty dollars as the court hearing the case thinks reasonable.

No seaman to sue for wages abroad, except in cases of discharge or danger of life. M. S. A. s. 190.

59. Every master of a ship registered in either of the said provinces, shall so far as the case permits, have the same rights, liens and remedies for the recovery of his wages, which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages,

Proviso. Master to have same remedies for wages as seamen. M. S. A. s. 191.

(a) See note p. 271, ante.

Secs. 113, 125. and if, in any proceeding in any court of Vice-Admiralty, or court possessing Admiralty jurisdiction in either of the said Provinces touching the claim of a master to wages any right of set-off or counter claim is set up, it shall be lawful for such court to enter into and adjudicate upon all questions and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due (b).

Limitation of
time in sum-
mary proceed-
ings:

113. The time for instituting summary proceedings under this Act, shall be limited as follows, that is to say:—

No order for the payment of money shall be made in any summary proceedings under this Act, unless such proceeding is commenced within six months after the cause of complaint arises; or if both or either of the parties happen during such time to be out of either of the said provinces, unless the same is commenced within six months after they both first happen to arrive or to be at one time within either of the said provinces.

125. Nothing in this Act shall authorize or justify the execution of any warrant or process of any justice of the peace within the jurisdiction of any court of Vice-Admiralty in either of the said provinces, unless such execution has been previously authorized by the judge of such court of Vice-Admiralty (c).

Although the agreement engaging the crew of a ship is not in writing, or not in the authorized form, it is binding and provable in favour of the seamen, but inadmissible in evidence for the owner or master against him (d).

Any seaman may bring forward evidence to prove the contents of any agreement under either of the Acts referred to or otherwise to support his case, without pro-

(b) See amendment as to Inland Waters, *ante*, p. 271, and as to M. S. A. (Imp.), *post*, p. 280.

(c) Substitute "Colonial Court of Admiralty," for "Vice-Admiralty," *vide ante*, p. 180; see, also, *The Canadienne*, 6 Q. L. R. 91.

(d) Maude & Pollock, 4th Ed., 196, note (e).

ducing or giving notice to produce the agreement or any copy thereof (e).

And no justice of the peace shall entertain or act upon any complaint or information under this Act, by or against any person belonging to or connected with any such foreign merchant ship, and not being a subject of Her Majesty, or exercise jurisdiction under this Act over or at the instance of any such person, without the consent of both parties to such complaint or information, or the consent, in writing, of the Consul, Vice-Consul, or commercial or other duly accredited agent of the country to which such ship belongs, first had and obtained, unless the parties to such complaint or information be subjects or citizens of a country or countries by the terms of treaties in force between Her Majesty's government and the government or governments of which country or countries it is stipulated that the assistance of British courts and magistrates shall be granted to the subjects or citizens of such countries, or one of such parties be a subject or citizen of any such country and the other be a subject of Her Majesty (f).

In addition to the foregoing provisions of Dominion statutes it is to be noted that by the application clause of Part III. of *The Merchant Shipping Act*, 1854-1876, certain of the provisions contained in that part apply to all ships registered in any of Her Majesty's dominions abroad when such ships are out of the jurisdiction of their respective governments, and to the owners, masters and crews of such ships; and that the whole of such Third Part applies to all ships registered in any British possession and employed in trading or going between any place in the United Kingdom and any place or places not situated in the possession in which such ships are registered, and to the owners, masters and crews of such ships respectively wherever the same may be. The provisions so made applicable to such ships include the sections which relate to the remedies for the recovery of wages.

(e) See *Hayward v. Maine*, 1 Kerr, N. B., 292; *Reg. v. Wheten*, 3 Allen, (N. B.) 270. R. S. C. c. 73, s. 9; *Ibid.* c. 74, s. 35.

(f) R. S. C. c. 74, s. 29.

All the foregoing statutes provide for the engagement of seamen by articles of agreement in the form there prescribed with provision as to rate and payment of wages, etc., but the High Court (Eng.), and, by force of the *Colonial Courts of Admiralty Act*, the Exchequer Court of Canada has "jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise" (g).

A seaman has a maritime lien on ship and freight for wages earned by him on board the ship (h).

His legal remedy for recovery of wages due is either by action *in rem* (i) upon the lien, in which the ship may be arrested by the court; or by action *in personam* instituted in Admiralty or other courts against the master, or owners, or both (j), or against a part owner (k).

A decree was made *in personam*, against a part owner for a proportionate part of the wages sued for (l).

Mariner's wages have priority over persons with a possessory common law lien up to the time of the beginning of such lien (m).

The maritime lien for damages arising out of damage done by a foreign vessel in a collision for which she is to blame, takes precedence of the maritime lien of the seamen for wages earned by them since the collision on board such vessel (n).

If the ship on board which the wages have been earned is lost, and insured, it has been held that the seamen are entitled to be paid out of the insurance money, on principles of equity (o).

(g) *A. C. Act*, 1861, (Imp.) s. 10.

(h) *The Reliance*, 2 W. Rob. 122; *The Madonna D'Ira*, *supra*; *The Neptune*, 1 Hagg. 238; *The Sidney Cove*, 2 Dods. 13; *The Golubchick*, 1 W. Rob. 148.

(i) *The Neptune*, *supra*.

(j) *Abbott on Shipping*, 13 Ed. 644; *Bayley v. Grant*, 1 Salk. 33; *The Jack Park*, 4 C. Rob. 311; *Davis v. Rotch*, Marsden's Rep. 20.

(k) *Ragg v. King*, 2 Stra. 558.

(l) *Rawlinson v. Pagan*, Marsden's Rep. 269.

(m) *The Immacolata Concezione*, 9 P. D. 37.

(n) *The Linda Flor*, Swa. 309; *The Elin*, 8 P. D. 39, 129 C. A.

(o) *In re Dawson*, 17 L. T. Bankruptcy, 100 (1851).

Wrongful Dismissal.—In a wages case the court has jurisdiction to entertain a claim by a seaman for compensation in the nature of damages for wrongful discharge before the term of his engagement has expired; (*p*) also in the case of the wrongful dismissal of a master (*q*).

In an action by a seaman for breach of the stipulations in his agreement for service, the Admiralty Division (Eng.) in addition to the compensation provided by the M. S. Act, 1854, can award general damages for breach of the agreement, and for hardships incurred by the seaman through the vessel being employed for purposes other than those contemplated by the agreement (*r*).

In fixing upon a *quantum meruit* where the master of a vessel claimed wages, the time during which he had been kept out of them was taken into consideration (*s*).

In a case where a ship having been damaged by collision, and the seamen were idle all winter during repairs, the seamen were in the Vice-Admiralty Court, Quebec, held not entitled to wages during that period (*t*).

Profit of a voyage in the nature of wages may be recovered as wages (*u*).

Where a seaman has agreed with the master of a British ship for payment of his wages in British sterling or any other money, any payment of, or on account of, his wages, if made in any other currency than that stated in the agreement shall, notwithstanding anything in the agreement, be made at the rate of exchange for the money stated in the agreement for the time being current at the place where the payment is made (*v*).

Shipmaster's Disbursements and Liabilities.—It was held by the House of Lords, May 27, 1889, in the case of *Hamilton v. Baker* (*w*), reversing the decision of the

(*p*) *The Great Eastern*, L. R. 1 A. & E. 384; *The Blessing*, 3 P. D. 35.

(*q*) *The W. B. Hall*, 8 C. L. T. 169.

(*r*) *The Justitia*, 12 P. D. 145.

(*s*) *The Providence*, 1 Hagg. 393.

(*t*) *The Normanton*, Que. Rep. (1877) p. 303.

(*u*) *The Frederick*, 5 C. Rob. 8.

(*v*) 52 & 53 V. (Imp.) c. 46, s. 4.

(*w*) *The Sara*, 14 A. C. 209.

Court of Appeal (x), and over-ruling *The Glentanner*, Sw. 415; *The Mary Ann*, L. R. 1 A. & E. 8; *The Feronia*, L. R. 2 A. & E. 65; and *The Ringdove*, 11 P. D. 120, that *The Admiralty Court Act, 1861*, does not give the master a maritime lien on the ship for disbursements. Since the date of that decision an Act has been passed providing that:—

“Every master of a ship and every person lawfully acting as master of a ship by reason of the decease or incapacity from illness of the master of the ship, shall, so far as the case permits, have the same rights, liens, and remedies for recovery of disbursements properly made by him on account of the ship, and for liabilities properly incurred by him on account of the ship, as a master of a ship now has for the recovery of his wages; and if, in any proceeding in any court of Admiralty or Vice-Admiralty, or in any County Court having Admiralty jurisdiction touching the claim of a master, or any person lawfully acting as master to wages or such disbursements or liabilities as aforesaid, any right of set-off or counter-claim is set up, it shall be lawful for the court to enter into and adjudicate upon all questions, and to settle all accounts then arising or outstanding and unsettled between the parties to the proceedings and to direct payment of any balance which is found to be due” (y).

And a similar Act has been passed by the Parliament of Canada as to the Inland Waters, *vide ante*, p. 271.

Upon the foregoing Act (Imp.) it has been held that where a ship has been chartered by the owners, and the charter party provides that the charterers shall pay for all the coals, port charges, pilotages, agencies, and commissions, the master has no statutory lien on the ship for coals and other necessities to be provided by the charterers. An expenditure therefor by the captain is not “a disbursement properly made by him on account of the ship” within the meaning of the Act. In such circumstances the master has no lien on the freight inasmuch as a lien on the freight

(x) 12 P. D. 158.

(y) 52 & 53 V. (Imp.) c. 46, s. 1 (assented to 26th August, 1889).

depends upon the liability of the ship to attachment for the same debt (z).

The master of a vessel registered at Winnipeg, in the province of Manitoba, and trading on lake Winnipeg, had in the years 1888-1890 no lien upon the vessel for wages earned by him as master. And even if such lien existed there was no court in Manitoba in which it could be enforced (a).

The master of a vessel should render an account before bringing an action, otherwise costs of action may go against him (b).

A master's wages may be forfeited by disregarding positive orders of the owners (c).

The statutes contain provisions for the protection of seamen against their own improvidence, and against imposition by others, *inter alia* :—

No seaman engaged under the *Seamen's Act, 1873*, for any ship registered in either of the said provinces, shall by any engagement made in either of the said provinces, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement made in either of the said provinces inconsistent with any provisions of the Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative; but this shall not apply to the case of any stipulation made by the seamen belonging to any ship which, according to the terms of the agreement, is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services, to be rendered by such ship to any other ship or ships. R. S. C. c. 74, s. 45.

And no wages due or accruing to any seaman or apprentice belonging to any ship registered in either of the said

(z) *Morgan v. Castlegate S. S. Co. (Lim.)* (H. L.), 62 L. J. Ad. 17 (1893).

(a) *Bergman v. The Ship Aurora*, 3 E. C. R. 228.

(b) *The Fleur de Lis*, L. R. 1 Ad. 49.

(c) *The Huron*, 6 C. L. T. 127.

provinces, shall be subject to attachment from any court; and every payment of wages to any such seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment or incumbrance thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable. R. S. C. c. 74, s. 80.

The law in the United States contains similar provisions (*d*).

After a claim has been reduced to a judgment the amount may, according to the practice of the Admiralty Division, be paid out to the solicitor if he is authorized in writing to receive it (*e*).

The sections just quoted, 45 & 80, R. S. c. 74, are not reproduced in *The Inland Waters Seamen's Act*.

The master of a foreign ship has a right to sue for his wages in British Admiralty Courts, although by the law of his flag he may have no lien upon the ship or freight for his wages, the question being one of remedy, and therefore governed by the *lex fori*. But any question as to the contract must be determined either by the law of the place where the contract is made, or by the law of the flag (*f*). It would seem that the court now has power to give effect to the municipal laws of a foreign state in favour of a seaman so far as they relate to the contract and not to the remedy, not applying merely the general maritime law (*g*).

Both masters and seamen have six years in which to bring suit in Admiralty (*h*), except in Canada, as specially provided in Dominion Statutes. *Vide* R. S. C. c. 137, s. 14, s-s. 5, and *ante*, p. 9.

A treaty between Great Britain and the United States respecting Merchant Seamen deserters, signed at Wash-

(*d*) *The John E. Holbrook*, 7 Benedict, 356.

(*e*) Wms. & B. 301; Coote, 2nd Ed., 130, 290.

(*f*) Wms. & B. 201.

(*g*) A. C. Act, 1861, s. 10; *The Union*, Lush. 202.

(*h*) Wms. & B. 207.

ington, June 3, 1892. [Ratifications exchanged at Washington, August 1, 1892], contains the following :—

ARTICLE I.

The consuls-general, consuls, vice-consuls and consular agents of either of the high contracting parties, residing in the dominions, possessions, or colonies of the other, shall have power to require from the proper authorities the assistance provided by law for the apprehension, recovery, and restoration of seamen who may desert from any ship belonging to a subject or citizen of their respective countries while in the ports of the other country. If, however, any such deserter shall have committed any crime or offence in the country where he is found, his surrender or restoration may be delayed until the proper tribunal before which the case shall be pending, or may be cognizable, shall have pronounced its sentence, and the sentence shall have been carried into effect.

It is understood that the preceding stipulations shall not apply to the subjects or citizens of the country where the desertion shall take place.

ARTICLE II.

The present treaty shall be ratified, and the ratifications shall be exchanged at London or at Washington without delay.

ARTICLE III.

The present treaty shall come into operation at the expiration of thirty days from the date of the exchange of ratifications. It shall remain in force for five years after that date, and thereafter until terminated by a twelve month's notice to be given by either high contracting party to the other.

In force by order in council of August 18, 1892. *Vide Canada Gazette*, Vol. xxvi. p. 562 (i).

(i) See also R. S. C. c. 74 & 75, as to Deserters.

OWNERSHIP, POSSESSION, RESTRAINT.

Before the *A. C. Act*, 1861, Admiralty only had jurisdiction to decide questions of title or ownership of a ship, or the proceeds of a ship remaining in the registry, when such questions arose in a cause of possession, salvage, damage, wages, or bottomry (*j*).

But the 8th section of that Act extended the jurisdiction to the deciding of all questions arising between the co-owners, or any of them, touching the ownership, possession, employment, and earnings of any ship registered in any port in England or Wales (for which "Canada" is here to be substituted as to the jurisdiction of the Exchequer Court as a Colonial Court of Admiralty, (*see* 2 Col. Cts. Ad. Act, 1890, p. 179, *ante*),—or any share thereof and to the settling of all accounts out standing and unsettled between the parties in relation thereto, with power to direct the ship or any share thereof to be sold, and to make such order in the premises as to the court should seem fit.

Where a ship is wrongfully detained, the ship itself may be arrested and proceeded against, and a decree obtained restoring it to the owner's possession, and the court will enquire into the validity of an alleged sale, or concerning any other circumstances which affects the rights of property in the ship (*k*).

In the case of a sailing yacht of 3 tons, unregistered, a co-ownership action was dismissed, by the Maritime Court of Ontario (*l*).

The court inclines against dispossession and requires the plaintiffs claim to be clearly proved (*m*).

The court had even when its jurisdiction was more restricted, authority to decree possession of a vessel to the owner who has been deprived of it by force or fraud (*n*).

(*j*) 3 & 4 V. c. 65 s. 6.

(*k*) *The Eliza Cornish* 1 Spk. 36; *The Empress*, Sw. 160; *The Glasgow*, Sw. 145; *The Victor*, 13 L. T. N. S. 21; *The Margaret Mitchell*, Sw. 382; *The Australia*, Sw. 486; *The Bonita*, Lush. 252; *The Horlock*, 2 P. D. 243; *The Rose*, L. R. 4 A. & E. 6.

(*l*) *The Hector*, 24 U. C. L. J. 281.

(*m*) *The Victoria*, Sw. 408; 5 Jur. N. S. 204.

(*n*) *The Beatrice* otherwise *The Rappahanaek*, 36 L. J. Ad. 9.

Where there are several owners of a ship, and the majority in interest wish to send her upon a voyage, and the minority have possession of the ship and decline to let her go, the majority may arrest the ship and proceed for a decree of possession to enable them to send her upon the voyage (*o*).

But the plaintiffs may be compelled to give security for the safe return of the ship to an amount sufficient to cover the value of the shares of the minority (*p*).

The minority on the other hand may bring an action of restraint against the majority, arrest, and detain the ship until security is given for her safe return (*q*).

The court will entertain actions by part owner or owners against co-owners to prevent them from damaging their rights or interests (*r*).

Restraint.—In an action of restraint by the owner of 2/64th shares against the other owners he obtained bail (*s*).

Where there is an equal division of voices and interests as to undertaking a particular voyage or adventure, Admiralty Courts in the United States have decreed a sale of the ship (*t*).

In England a change of possession upon petition of the minority of interest has been refused (*u*).

The Admiralty Courts Act, 1861, s. 9, empowers the court in suits between co-owners to direct the sale. But it will not exercise the power of sale conferred upon it by ordering the sale of a ship, unless a part owner—whether he be the owner of a minority or majority of shares—makes a very strong case, and in the opinion of

(*o*) *The New Draper*, 4 Rob. 287; *The Kent*, Lush 495; *The Elizabeth and Jane*, 1 W. Rob. 282; *The Idas*, Br. and Lush, 68.

(*p*) *The Apollo*, 1 Hagg. 306.

(*q*) *Haly v. Goodson*, 2 Mer. 77; *The Vinlobala*, 13 P. D. 42.

(*r*) *Abbott on Shipping*, 13th Ed. 88, 147, 740.

(*s*) *The England*, 12 P. D. 32; *Groff A. Bernstorff*, 2 Spk., 30; *The Falcon*, 5 P. D. 169.

(*t*) *Skrime v. The Sloop Hope*, Bee. 2; *The Brig Seneca*, Gilpin 10.

(*u*) See *The Valiant*, 1 W. Rob. 64; *The Egyptienne*, 1 Hagg. 346 n; *The Elizabeth and Jane*, 1 W. Rob. 278.

the court the sale will be to the advantage of all the owners (*v*).

In such actions the shares of the plaintiffs may be appraised, and before a sale by auction is ordered, the defendants are given the option of purchasing such shares at the appraised value (*w*).

Ownership.—It was held that the provisions of the M. S. Act would not prevent property in a ship from passing to the assignee in insolvency, under the Insolvency Act, 1876, Canada (*x*).

In England the Admiralty Division will appoint a receiver in a co-ownership suit where circumstances exist, which, in the opinion of the court, render such a course just and convenient (*y*).

In actions of possession, if the ship is foreign, notice of the action must be served on the consular officer of the State to which she belongs (*z*), before a warrant for her arrest will issue.

It is with the greatest reluctance that the court adjudicates in suits of possession where foreigners alone are concerned (*a*).

But the Admiralty Division in England has jurisdiction to, and will, on the intervention of the representative of a foreign State, or by consent of the parties, entertain a cause of possession or mortgage of a foreign ship belonging to such State, so far as to ascertain the true position of the claimants and the nature of their title, and will, where it is for the advantage of the parties, order a sale of the ship (*b*).

All courts having Admiralty jurisdiction in any of Her Majesty's Dominions have power to remove the master of a ship upon application by the owner, being within the juris-

(*v*) *The Marion*, 10 P. D. 4.

(*w*) *Wms. & B.* 28.

(*x*) *Jones v. Kinney*, 11 S. C. R. 708.

(*y*) *The Amphill*, 5 P. D. 224.

(*z*) Rule 37, p. 27, *ante*.

(*a*) *The Groff A. Bernstorff*, 2 Spinks, 30.

(*b*) *The Evangelistria*, 46 L. J. Ad. 1; 3 Asp. N. S. 264; 35 L. T. 410; 25 W. R. 255.

diction of the court, or by the part-owner or consignee, or by the agent of the owner, or by any certificated mate, or by one third or more of the crew of such ship, and upon proof on oath to the satisfaction of the court that such removal is necessary. And the court may appoint a new master (c).

The fact that a master of a ship is also a part-owner, does not affect the construction of the contract under which he is master, as to the question of dismissal (d).

In actions of possession in Admiralty the master of a ship who retains possession against the will of the owners may be dispossessed. Where the master is not a part-owner, the court will order him to deliver up possession whenever the majority of the owners are unwilling that he should retain possession; where the master is a part owner the court usually requires some special reason to be shown for his removal, but even in this case will usually remove him on the application of the majority without inquiring minutely into the causes of their dissatisfaction (e).

If during the progress of a voyage the master of a Canadian foreign sea-going ship, or of an inland ship is superseded, quits the ship, or is succeeded in command, he is to deliver to his successor the ship's certificate of registry and documents relating to the navigation of the ship and to the crew which are in his custody, under the penalty there mentioned; and his successor should, in case of said sea-going ships, enter in the log book a list of the documents so delivered to him (f).

The master of a vessel has no power to sell her so as to affect the insurers, except under circumstances of stringent necessity; such circumstances as after sufficient examination of her condition, after every exertion in his power, within the means at his disposal, to extricate her from peril, or to raise funds for her repair, leave him no alternative but to sell her as she is (g).

(c) M. S. A. 1854, s. 240.

(d) *Guildford v. Anglo-French Steamship Co.*, 9 S. C. R. 303.

(e) *Wms. & B.* 23.

(f) R. S. C. c. 74, s. 105; *Ibid.* c. 75, s. 29.

(g) *The Cobequid Marine Insurance Co. and Barteaux*, L. R. 6 P. C. 319.

MORTGAGES.

By an Act to improve the practice and extend the jurisdiction of the High Court of Admiralty of England it was provided that whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said court, in either such case the said court shall have full jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or cause of action respectively (*h*). And by another Act, also to extend the jurisdiction and improve the practice of the High Court of Admiralty, it was further provided that the High Court of Admiralty should have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of *The Merchant Shipping Act, 1854*, whether the ship or the proceeds thereof were under the arrest of the said court or not (*i*). This latter provision was adopted by the Parliament of Canada by 51 V. c. 39, as to Ontario which enacted that the Maritime Court of Ontario should have jurisdiction over, any claim in respect of any mortgage upon any ship or vessel now or hereafter duly registered in the province of Ontario, whether the ship or vessel, or the proceeds thereof, be under arrest of the court or not; and that the jurisdiction thereby conferred might be exercised by proceedings *in rem* or *in personam*.

The rights of mortgagees were protected by *The Maritime Court Act for Ontario* (*j*), s. 14, s-ss. 5 & 6, as follows:—

“No right or remedy *in rem* given by this Act only shall be enforced as against any subsequent *bona fide* purchaser or mortgagee of a ship, unless the proceedings for the enforcement thereof are begun within ninety days from the time when the same accrued:

(*h*) 3 & 4 V. c. 65, s. 3 p. 193, *ante*; MacLachlan's Merchant Shipping, 4th Ed. 52.

(*i*) A. C. Act, 1861, s. 11, p. 196, *ante*.

(*j*) R. S. C. c. 137.

"No right or remedy *in rem* given by this Act, except a right or remedy *in rem* for the wages of seamen and other persons employed on board a ship on any river, lake, canal or inland water, of which the whole or part is in the province of Ontario, shall be enforced as against any *bona fide* mortgagee under a mortgage duly executed and registered prior to the first day of October, one thousand eight hundred and seventy-eight."

As to which provisions of *The Maritime Court Act*, it is enacted by *The Admiralty Act, 1891*, *ante*, p. 9. that they shall apply to any proceedings instituted in the registry of any Admiralty district in the province of Ontario."

A mortgage of a ship should be in the form prescribed by statute, and registered with the registrar of shipping at the port at which the ship is registered (*k*). A power of sale is incident to the mortgage (*l*); but a power of sale is not essential to a mortgage (*m*).

The mortgagor retains all the rights and powers of ownership subject to the mortgage, and all his contracts relating to the ship will be valid, provided he does not impair the security of the mortgagee (*n*).

Where a beneficial charter-party has been entered into by a mortgagor in possession, the mortgagee cannot object to its being carried out, simply upon the ground that the effect of carrying it out will be to remove the ship out of the jurisdiction of the court, and to render it difficult for him to enforce his mortgage security (*o*).

By virtue of s. 11, above cited, of the Admiralty Act, 1861, a registered mortgagee can institute an action and have the ship arrested and detained until bail be given to the amount of his claim. The jurisdiction thus conferred may be exercised *in rem* or *in personam* (*p*). It is confined to registered mortgages (*q*).

(*k*) R. S. C. c. 72, pt. 3; M. S. A. s. 66.

(*l*) R. S. C. c. 72, s. 73; M. S. A. s. 71.

(*m*) *Dickenson v. Kitchen*, 8 El. & Bl. 789.

(*n*) R. S. C. c. 72, s. 36; *Collins v. Lamport*, 34 L. J. Ch. 196.

(*o*) *The Fauchon*, 5 P. D. 178.

(*p*) 24 V. c. 10, s. 35.

(*q*) *Ibid.* s. 11.

As a general rule the court exercises its jurisdiction by selling the ship to meet the claim of the plaintiff (*r*).

The jurisdiction as to mortgages not so registered is only exercised where the ship is under arrest or the proceeds in court (*s*).

Aliens.—It has been held that there is nothing in the M. S. Act to prevent an alien from being a mortgagee of a British ship (*t*).

The mortgagee is not by reason of his mortgage to be deemed to be the owner of a ship (*u*). But he may take possession on default, and to enable him to do so may pay a claim to obtain the release of the ship as in the following case :—

The plaintiffs were mortgagees of 48-64th shares. The master having brought an action *in rem* against the vessel and arrested her, the plaintiffs paid the amount of his claim in order to obtain her release, and to enable them to take possession under their mortgage. The plaintiffs then sued defendants, the owners of the 16-64th shares, to recover the amount paid to the master, and it was held that as the mortgagor and the other co-owners were severally liable for the disbursements paid by the master, and as the plaintiffs could not obtain possession of their shares as long as the vessel was under the arrest of the court they were entitled to recover from the defendants the amount paid by them (*v*).

Under the *M. S. Act*, 1854, and the 3rd section *M. S. Amendment Act*, 1862, the court will look behind the register to the real character of transactions between co-owners, and treat as a mortgage that which is on the face of it, an absolute transfer, if it should appear that such was the intention of the parties (*w*).

(*r*) *The Fairlie*, 37 L. J. Ad. 66.—*The Evangelistria*, *ubi supra*.

(*s*) 3 & 4 V. c. 65 s. 3, p. 193; *The Dowthorpe*, 2 W. Rob. 80; *The Fortitude*, *Ibid.* 222

(*t*) *Comstock v. Harris*, 13 O. R. 407.

(*u*) R. S. C. o. 72, s. 36; M. S. Act, s. 70.

(*v*) *The Orchis*, 15 P. D. 38 C. A.

(*w*) *The Innisfallen*, 1 A. & E. 72. 35 L. J. Ad. 110; 2 Asp. 470.

A mortgagee not in possession is not enabled to maintain an action of restraint by s. 70, *M. S. Act* (x).

Priority.—The claim of a mortgagee, whether in possession or not, ranks below the claims of persons having maritime liens on the mortgaged ship for bottomry, salvage, damage, wages, or master's wages and disbursements (y).

A person having a possessory lien for work done to the ship by order of the mortgagor in possession can hold same as against a mortgagee (z).

A registered mortgage is entitled to take precedence of a claim for necessities or repairs (a).

By the sale of a ship under execution in action *in personam*, the purchaser acquires only such title as the parties to the action possessed; and the judgment though of a foreign court (viz., at New Orleans) was held not binding on the mortgagees or on the courts in England (b).

The claim of a registered mortgagee is entitled to precedence of a claim for damage to cargo under the 6th section of A. C. Act, 1861 (c).

Where there are several mortgages they take priority *inter se* according to the order of time in which they are recorded (d).

Unregistered mortgages are good as against every one except registered transferees or mortgagees, but will be postponed to a registered mortgage even although the latter was made at a later date (e).

A registered mortgagee may, according to the practice of the High Court (Eng.) in Admiralty, claim a foreclosure;

(x) *The Innisfallen*, *supra*.

(y) *The Bold Buccleugh*, Moo. 7 P. C. C. 267-281; *The Mary Ann*, L. R. 1 A. & E. 8; *The Feronia*, L. R. 2 A. & E. 65.

(z) *The Sherbro*, L. J. Ad. 28; *The Susannah Thrift*, 4 Asp. 254.

(a) *The Heinrich Bjorn*, 10 P. D. A. C. 44, overruling *The Ella A. Clark*, Br. & L. 32.

(b) *Simpson v. Fogo*, 29 L. J. c. 637; *Secus* if the judgment had been in rem. *Castrique v. Imrie*, 30 L. J. C. P. 177.

(c) *The Pieve Superiore*, L. R. 5 P. C. 482.

(d) R. S. C. c. 72, s. 35, *post*; M. S. A. s. 69; *Coombes v. Mansfield*, 24 L. J. Chy. 513.

(e) *Keith v. Burrows*, L. R. 1 C. P. D. 722; *Wilson v. Wilson*, L. R. 14, Eq. 32.

e. gr., where such a mortgagee of $\frac{1}{16}$ shares of a British ship claimed a decree of foreclosure, or in the alternative a sale of the mortgaged shares, and the mortgagor appeared as defendant, but made default in pleading, the court ordered that the defendant should be precluded from all equity of redemption in the mortgaged shares unless the amount due on the mortgage was paid within a month (*f*).

A mortgagee of a ship decreed in a salvage action to be sold, was allowed by the court, on application, to bid as a purchaser at the sale (*g*).

PILOTAGE.

Claims for pilotage may be enforced in Admiralty (*h*).

A pilot is a mariner, and as such may sue for his wages in Admiralty (*i*).

The court might moderate or supersede extortionate contracts made under pressure of necessity arising out of the situation of a vessel at sea (*j*).

No pilot is bound to go on board a vessel in distress to render pilot service for mere pilotage reward; if he did take charge of a vessel so circumstanced he would be entitled to a salvage remuneration (*k*).

Under *The Vice-Admiralty Courts Act*, 1863, (now repealed) those courts had jurisdiction over "claims in respect of pilotage." Sec. 10, s-s. 3.

By section 57 of *The Pilotage Act* of Canada, the employment of a pilot is not compulsory (*l*).

Pilots and pilotage in Canada are under the department of the Minister of Marine and Fisheries (*m*).

The Act provides against a pilot being taken to sea without his consent, or beyond the limits for which he is

(*f*) *The Buttermere*, Wms. & B. 39 n.

(*g*) *The Wilsons*, 1 W. Rob. 172.

(*h*) *The Nelson*, C. Rob. 227; *The Benjamin Franklin*, *ib.* 350; *The Bee*, 2 Dods. 498; *The Donethorpe*, 2 W. Rob. 73; *The Phoebe*, *Stuart's Rep.* (L. C.) 60.

(*i*) *Ross v. Walker*, 2 Wils. 264.

(*j*) *The Nelson*, *sup.*; see also *The Acolus*, L. R. 4 A. & E. 29.

(*k*) *The Frederick*, 1 W. Rob. 17.

(*l*) R. S. C. c. 80, and see *The Warelet*, Y. A. D. 34.

(*m*) 55-56 V. c. 17, Schedule.

licensed, and for compensation to him in case of breach of that provision (n).

Effect was given to this provision by the Vice-Admiralty Court of Quebec, the court at the same time considering how far the provision was or was not repugnant to section 357, *M. S. Act* (Imp.) (o).

TOWAGE.

Towage is one of the matters specified in s. 6 of 3 & 4 V. c. 65, p. 193, *ante*, it having been thereby enacted that the High Court of Admiralty (now the Admiralty Division of the High Court, Eng.), should have jurisdiction to decide all claims and demands whatsoever (as there enumerated) *inter alia*, "in the nature of towage." This subject of jurisdiction was described in *The Vice-Admiralty Courts Act*, 1863, now repealed as 'Claims in respect of Towage.'

It has recently been decided that the provision first named gave no maritime lien.

An action was brought in the Chancery Division by a holder of mortgage debenture bonds of a company on behalf of himself and the other holders of like bonds, for the realization of their securities, and a receiver was appointed, and an order made for winding up the company, and official liquidator appointed. The owners of four steam tugs, creditors of the company, asked for a declaration that they were entitled to a lien for towage services upon the vessels of the company, and to be paid their claims in full, with costs out of the proceeds of sale of the vessels of the company. It appeared that the services rendered were ordinary towage of the vessels in and out of the harbour, and for accelerating their speed. Held (following opinions expressed in *The Henrich Bjorn*, 11 App. Cas. 270), that the Act, 3 & 4 V. c. 65, s. 6, did not create a maritime lien for ordinary towage services rendered to a ship, not in the nature of salvage. Jurisdiction as to towage existed before that Act, but with no maritime lien (p).

(n) R. S. C. c. 80, s. 39.

(o) *The Farewell*, 7 Que. L. R. 380; 2 Cartwright, 378.

(p) *Westrup v. Great Yarmouth Steam Carrying Co.*, L. R. 43 C. D. 241; *The Sara*, 14 App. Cas. 209.

Where there is negligence in the performance of towage services resulting in the loss of the vessels to which the service is being rendered, the owners of the tugs are liable (q).

The owners of a steamship were held bound by a towage contract entered into by a person employed by them to superintend—(although not the master)—the towage of the vessel in sections, it being too large to pass through the canals on the course to its destination, and a judgment for the tug owners upon proceedings *in rem* was upheld by the Supreme Court. For report of judgment on appeal by the Registrar of that court see Cassel's Dig. 1875-1893, p. 522 (r).

Services begun as towage may become salvage services (s).

A tug has the right to cast off her tow in stress of weather when the latter is overrunning her (t).

NECESSARIES.

By 3-4 V. c. 65, s. 6, p. 193, *ante*, jurisdiction was conferred upon the High Court of Admiralty to decide all claims and demands whatsoever for necessities supplied to any foreign ship or seagoing vessel; and by 24 V. c. 10, s. 5, p. 195, *ante*, that jurisdiction is over any claim for necessities supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown that at the time of the institution of the cause no owner or part owner of the ship is domiciled in England or Wales. These two statutes are to be read *in pari materia* (u).

The following things have been held to be necessities: Cables and rigging, *The Sophie*, 1 W. Rob. 368; clothing for the crew, *The Feronia*, L. R. 2 Ad. 65, 37 L. J. Ad. 60; a screw propeller for a steamship, *The Hecla*, 1 Spk. 441;

(q) *Sewell v. British Columbia Towing and Transportation Co.*, 9 S. C. Rep. 529.

(r) *The Athabasca*, Canadian Pacific Ry. Co. v. Neelon, 5 C. L. T. 600, and Cassel's Dig. *supra*.

(s) *Vide ante*, p. 217; see also *The Herman Ludwig*, Y. A. D. 211.

(t) *The Henrik Bjorn*, 10 P. D. 44, 60.

(u) *The Challenger*, 14 Q. L. R. 135.

coppering, *The Thurlani*, 32 L. T. N. S. 841; money paid for the insurance of freight, *The Riga*, L. R. 3 Ad. 516, 41 L. J. Ad. 39; dock dues, *The St. Lawrence*, 5 P. D. 250, 40 L. J. Ad. 82; necessities include money advanced for their purchase, *The Sophie*, *ubi supra*, *The Anna*, 45 L. J. Ad. 98.

A claim for brokerage on a charter party obtained for a foreign ship is not a claim for necessities supplied to a foreign ship (*v*).

The insurance of a ship is not a "necessary" (*w*).

The extent of the jurisdiction of the High Court in Admiralty and the rights of material men have recently been defined in certain cases severally appealed to the Privy Council and the House of Lords. The first of these cases was on appeal from the Vice-Admiralty Court of Gibraltar, and it was held that no maritime lien attached to a ship in respect of coals or other necessities supplied to it, and that Vice-Admiralty Courts had not (apart from statute) more than the ordinary Admiralty jurisdiction, *i. e.* as it existed before 3 & 4 V. c. 65 enlarged it. The Vice-Admiralty Act, 1863, s. 10, ss. 10, did not create a maritime lien with respect to necessities supplied within the possession (*x*).

In 1886 the House of Lords considered the same subject, upon appeal from the Court of Appeal, in an action for necessities the nature of which appears in a contract set out in the report of the case in the Court of Appeal, whereby it appeared that the plaintiff had agreed with G. A., owner of $\frac{3}{8}$ th shares, and sole managing owner, of a foreign (Norwegian) ship then at the Port of Liverpool, to advance £600 for necessities which G. A. agreed to repay with interest on return of the vessel; shortly after which transaction, and prior to the commencement of the action, the shares of G. A. were sold to N. A. and others who were defendants in the action. Fry, L.J., in giving the judgment of the Court of Appeal said:—

(*v*) *The Marianne* 1891, P. 180.

(*x*) *The Golden Sea*, 7 P. D. 194.

(*y*) *The Rio Tinto*, 9 App. Cas. 356, 1883.

"The question in this action is whether the present owners can be affected with liability under the contract of 23rd March, 1882, and as they were not parties to that transaction, they can only be so affected if the contract in question created a charge upon the ship which they purchased." And at p. 60-61,—“In our opinion the two statutes 1840 and 1861 ought notwithstanding the observations of Mellish, L.J., in *The Two Ellens*, L. R. 4 P. C. 161, to be construed in *pari materia*, and we think that the decision of the Privy Council in that case lends confirmation to the conclusion at which we arrive, namely, that whilst the statute of 1840 has enabled the material man to enforce his claim in the Admiralty Court, and as one means has given him a right to arrest the ship, it has given him no maritime lien, and consequently no right of action against the ship until action brought” (y).

“It does not appear to us probable that the legislature, whilst giving a remedy against both foreign and British ships, should have created a lien in the one case which it did not create in the other. To hold that the remedies are alike in the two cases is, we think, more consistent with international comity than an opposite decision would be.” And it was held, (reversing the decision of Sir J. Hannen), that before the Act 3 & 4 V. c. 65, s. 6, there was no maritime lien on a foreign ship for necessaries supplied to her, that that section did not give any maritime lien, but only a right to seize the ship on the institution of an action, and therefore that the plaintiffs were not entitled to recover against the vessel (z).

When the case came before the House of Lord the only question, as stated at p. 271, raised by the appeal was whether the plaintiffs had a maritime lien for the advances, and the argument of Sir R. Webster, for the defendants brought out the following points:

Prior to the Act, (3 & 4 V. c. 65) some proceedings *in rem* were independent of maritime lien, *e. gr.*, actions between co-owners, of possession and of restraint. Therefore it is

(y) *The Heinrich Bjorn*, 10 P. D. 44, 60.

(z) *The Heinrich Bjorn*, *Ibid.*

not a correct statement of law to say that whenever there are proceedings *in rem* there is a maritime lien. It is clearly established that similar words in 24 V. c. 10, and other Acts do not confer a maritime lien; citing *The Two Ellens* (a), and *The Rio Tinto* (b).

And the learned counsel admitted that the decision of this case would not effect the authority of those cases decided upon questions of priorities when the Admiralty Court being seized of the proceeds of the sale of a ship exercised its equitable jurisdiction in distributing those proceeds amongst the various claimants, (p. 275).

Lord Watson, in giving judgment said, (p. 277):—

"The remedy *in rem* is obviously an appropriate one in the case of a plaintiff who has a right of property or other real interest in the ship, or a claim of debt secured by a lien which the law recognizes. We have been informed that under the recent practice of the Admiralty Court the remedy is also given to creditors of the ship owner for maritime debts which are not secured by lien; and in that case the attachment of the ship, by process of the court, has the effect of giving the creditor a legal *nerus* over the proprietary interest of his debtor, as from the date of the attachment."

The judgment of their lordships as stated in the head-note of the report was that:—

"The Statute 3 and 4 V. c. 65, s. 6, does not give a maritime lien in respect of necessities supplied to a foreign ship in an English port. The plaintiffs advanced to the part-owner of a foreign (Norwegian), ship then at Liverpool, money for necessities for the ship. The part-owner having sold his interest in the ship to the defendants, the plaintiffs brought an action *in rem* for the amount of the advances; and it was held by the House of Lords affirming the decision of the Court of Appeal (10 P. D., 44 reported there as the *Heinrich Bjorn*), that the action could not be maintained" (c).

(a) L. R. 4 P. C. 161.

(b) 9 App. Cas. 356.

(c) *Northcote v. Owners of the Heinrich Bjorn. The Heinrich Bjorn*, 11 App. Cas. 270.

viz., after a writ of summons has issued a warrant for arrest of the property may be issued upon an affidavit stating *inter alia*, the national character of the ship, and that to the best of the deponent's belief, no owner or part owner of the ship was domiciled within Canada at the time when the necessities were supplied (*d*).

The Admiralty Division of the High Court in England cannot entertain an action for necessities supplied to a British ship the owners of which are domiciled in Great Britain (*e*).

BUILDING, EQUIPPING AND REPAIRING.

Those whose trade it is to build, repair or equip ships are commonly called material men (*f*).

The possessory lien of the ship-wright is superior to all claims except liens actually attaching at the time of the ship coming into his hands (*g*).

And Admiralty in taking the vessel out of his possession will respect his claim (*h*).

Under *The Vice-Admiralty Courts Act*, 1862, repealed by *The Colonial Courts of Admiralty Act*, 1890, there was jurisdiction over "claims in respect of building, equipping or repairing, within any British possession, of any ship of which no owner or part owner was domiciled within the possession at the time of the work being done." The provision of *The Admiralty Court Act*, 1861, p. 195, *ante*, gives Admiralty jurisdiction over such claims—"if, at the time of the institution of the cause, the ship or the proceeds thereof are under arrest of the court," without reference to the owners domicile.

The liability of owners of ships, and the power of masters to bind them, is governed by the law of the country to which the ship belongs, rather than by general maritime law (*i*).

(*d*) Pages 26-28 *ante*.

(*e*) *The Douse*, L. R. 3 A. & E. 135; and see *The Emma*, Y. A. D. 282.

(*f*) *The Neptune*, 3 Hag. 142.

(*g*) *The Gustaf*, Lush. 506.

(*h*) *Coote's*, Ad. Pr. 14.

(*i*) *Lloyd v. Guibert*, L. R. 1 Q. B. 115; *MacLachlan's Merchant Shipping*, 4th Ed., 174; *Pope v. Nickerson*, 3 Story (Am.) 465.

In the United States no lien is created by supplies furnished a ship at her home port, *i.e.*, her port of registry or enrollment, or at a port where her owner resides (*j*). And the Supreme Court, U. S., has held that there is, in the case of domestic vessels, no lien for necessities, unless the local law of the particular state where they were supplied creates such lien (*k*). But there is a maritime lien for necessities supplied to a foreign ship (*l*), and for this purpose the States are foreign to each other (*m*).

Referring to a dictum in a previous case to the effect that the main object of the Act of 1840, was to assimilate the law of England to the general law of the maritime states of Europe, Lord Watson says, (p. 279): "I have already indicated that that appears to me to be an assumption inconsistent alike with the title and preamble of the Act and with the character of its provisions. Many foreign states whose systems of jurisprudence are based on the civil law admit a maritime lien for necessities, but the ground upon which the courts of England have declined to recognize such a lien is not, in my opinion, that it is opposed to some rule or principle peculiar to English law; but that it is contrary to the general principles of the law merchant" (*n*).

Time of Attachment of Lien.—The lien takes effect from the moment of the arrest of the ship. Where, therefore, such an action was commenced against a vessel belonging to a limited company, and the company, after a warrant of arrest had been served, was ordered to be wound up, it was held that the official liquidator had no claim to the proceeds of the vessel in the hands of the court as against the plaintiff (*o*).

But in actions for necessities the court exercises its jurisdiction *in rem* in the manner indicated in Rules 35-37

(*j*) Henry on Admiralty (Am.), 139, 141.

(*k*) *The General Smith*, 4 Wheat, 438.

(*l*) Henry (Am.), 127.

(*m*) 2 Conklings, U. S. Ad., 493; *The General Jackson*, 1 Sprague, 554.

(*n*) *Northcote v. The Owners of The Henrich Bjorn*, *ubi supra*.

(*o*) *The Cella*, 13 P. D. 82 C. A.

Mr. MacLachlan, in the 4th edition of his valuable work, p. 113, cites *The Two Ellens*, L. R. 3 Ad. 345, as authority for the statement that the word "necessaries" would cover repairs and equipping; and observes that the meaning given of the term "necessaries" by Lord Tenterden, in *Webster v. Seekamp*, 4 B. & Ald. 352, was adopted by the Admiralty judge in the case of *The Rigu*, L. R. 3 Ad. 516, viz.: "What a prudent man, if present, would do under the circumstances in which the agent, in his absence, is called upon to act; whatever is fit and proper for the service on which a vessel is engaged; whatever the owner of that vessel, as a prudent man, would have ordered if present at the time."

It has been held that by paying the claim of a material man the money so expended may be recovered as necessities (*p*), and in that case it must be shown that no owner or part owner of the ship was domiciled within Canada at the time when the necessities were supplied, as well as the national character of the ship. Rule 37 (b), *ante*.

An action *in rem* may be instituted and a warrant of arrest issued upon a claim for building, equipping, or repairing any ship, if the ship, or the proceeds of the ship, are under the arrest of the court; Rule 37 (c), *ante*.

MATTERS ARISING INCIDENTALLY.

British Admiralty Courts have jurisdiction as to charter-parties, general average, bills of lading, freight, demurrage and insurance when claims respecting them arise incidentally in actions within its special jurisdiction (*q*).

(*p*) *The Albert Crosby*, Lush. 44.

(*q*) Charters, *The Jaederen*, 1892, P. 351; *The Argentino*, *ubi. supra*; *The Heinrich*, L. R. 3 A. & E. 424; *The Carron Park*, 6 Asp. 543; General average, *The Oquendo*, 3 Asp. N. S. 558, *Cargo ex The Annie M. Allen*, 3 C. L. T. 108; *Galam*, 2 Moo. P. C. N. S. 216; *The Cargo ex Hamburg*, 2 Moo. P. C. N. S. 321; *The Carron Park*, 6 Asp. 543; *The Marpesia*, 1891, P. 403; Bills of Lading, A. C. A. s. 6, *ante*, p. 195, *The Xantho*, 6 Asp. 8 C. A. Freight, *The Teutonia*, 4 P. C. 171; *The Stornaway*, 4 Asp. 529. Demurrage, Wms. & B. 103-4, *The Abne Holme*, 1893, P. 173. Insurance premium, *The Edinmore*, 1893, P. 79.

ACCOUNTS.

The court will not only order accounts to be taken in cases when they are necessary in a suit, but will also entertain an independent action for an account, but only in cases where a dispute arises relating to the earnings of the ship, as in an action between co-owners, *A. C. Act*, 1861, s. 8. *Wms. & B.* 29; Rules 6 and 117, pp. 17, 57, *ante*, (r).

The owner's action of account is preserved to him by *R. S. C. c. 72*, s. 47, *post*.

The court will marshal the assets as far as it can without contravening the rights of the creditors (s).

LORD CAMPBELLS' ACT.

The Admiralty Division in England has no jurisdiction to entertain an action *in rem* against a foreign ship for a claim under Lord Campbell's Act (9 and 10 V. c. 93, s. 2,) in the first instance, though if such a claim arose in a proceeding by owners for limitation of liability the court would entertain it under their general statutory jurisdiction as to limitation of liability (t).

"The Act says, 'whenever the death of a person shall be caused by wrongful act, neglect, or default,' words not applicable to an inanimate thing like a ship, which is not capable of doing a wrong" (u).

It was held that the late Maritime court of Ontario had, apart from Lord Campbell's Act, no jurisdiction in an action for personal injury resulting in death (v).

ACTIONS AGAINST FOREIGN SHIPS.

Notice to Consul.—A foreign ship cannot be arrested in an action for wages, or for possession, unless notice of the action has been first served upon a consular officer of the state to which the ship belongs, if there is one resident in

(r) *The Seaward*, 3 E. C. R. 268; *The Idas*, Br. & L. 65; *The Albion*, 6 L. T. N. S. 164.

(s) *The Bonaparte*, 3 W. Rob. 202.

(t) *The Bernina*, 12 P. D. 58, 83; *The Vera Cruz*, No. 2, 9 P. D. 98; 10 A. C. 59.

(u) *Ibid*, p. 63.

(v) *The Garland*, *Monaghan v. Horn*, 7 S. C. Rep. 409.

the district within which the ship is at the time of the institution of the suit (*w*).

The Court of Admiralty has a right to interpose in suits for wages by foreign seamen against foreign vessels. The consent of the minister or consul of the country to which the vessel belongs is not essential to found the jurisdiction of the court in such suits. It is necessary, however, that notice of the proceedings should be given to the representative of the government of such country (*x*).

The seaman who has signed articles is bound by the law of the flag, and upon protest of the consul of the foreign country to which the ship belongs, proceedings may be stayed (*y*).

Should the consul, after receiving the notice enter a protest against the cause being entertained, and state reasons for it, the plaintiff must answer the objection and the judge, in his discretion, will decide, whether the action shall be allowed to proceed, or be dismissed (*z*).

In wages cases, if the consul undertakes to do justice between the foreign seamen and the foreign ship or owners, the court generally gives effect to his intervention (*a*).

The rule referred to also applies to masters of foreign ships (*b*).

Where a consul had entered into a bond for the release of a vessel belonging to his country (Norway), and submitted to the jurisdiction of the court, and afterwards entered a protest and asked the dismissal of the action on the ground that she was a foreign vessel, and that notice of the action had not been served on him, the protest was over-ruled and the motion dismissed with costs (*c*).

Where a foreign ship, at the time she came within British jurisdiction was already by the law of her flag sub-

(*w*) See Rule 37 (*a*) p. 27, *ante*.

(*x*) *The Golubchick*, 1 W. Rob. 143.

(*y*) *The Nina*, 37 L. J. Ad. 17, 2 P. C. 38; *The Leo XIII.*, 8 P. D. 121; 32 L. J. P. 58; *The Bridgewater*, 7 Q. L. R. 346.

(*z*) *The Nina*, *sup.*; *The Milford*, Sw. 362; *The Octavie*, Br. & L. 252.

(*a*) *The Timor*, 12 W. R. 219.

(*b*) *The Milford*, Sw. 362.

(*c*) *The Monark*, 9 Q. L. R. 211.

ject to a charge in favour of her own government for the expenses of conveying her crew back to their own country, paid by the consul of that government, it was held that such charge should have priority over a solicitor's lien, and rank next to salvage (*d*).

In the United States of America it has been held that where a foreign vessel has been sold under a decree of a Court of Admiralty jurisdiction, and the parties interested are absent, and there is no other legal representative, the consul of the country to which the vessel belonged may petition to have the proceeds of sale paid into court (*e*).

A Russian vessel had been sold by order of court in another suit in which the proceedings had been in default of appearance, and the proceeds of the sale remained in the registry. An application being made on behalf of the master and a portion of the crew, that the wages due to them, and a sum by way of *viaticum*, as well as in respect of certain necessary expenses incurred by them, should be paid out of court at once without requiring them to file pleadings or take other steps customary in a case of default of appearance, the registrar read a letter from the Russian consul, stating that he had made advances to the crew for their expenses, and that by the law of Russia the money payable to the crew ought to be paid to him on their behalf. The court made an order waiving, under the circumstances, all the preliminary steps in a case of default, and ordering the money to be paid out of court, on the solicitor of the parties before the court undertaking to pay the Russian consul the sums he had advanced for necessities on producing his receipt (*f*).

(*d*) *The Livietta*, 8 P. D. 200.

(*e*) *The Adolph*, 1 Curtis Cir. Ct. (Am.) 87.

(*f*) *The Juliana*, 35 L. T. N. S. (1876.) 410.

FORM OF NOTICE TO CONSUL OF INSTITUTION OF ACTION
AGAINST A FOREIGN SHIP.

The day of A. D., 1877.

The [*state nationality*] ship or vessel *Golubchick*,

, Master

Sir,—I hereby give you notice that I have this day instituted an action in the Exchequer Court of Canada in Admiralty, in the district, against the above named ship, now lying in the port of to enforce payment of wages due to *A. B.*, ordinary seaman on board the said ship, on her voyage from to
[or an action of possession, as the case may be].

I am sir,

Your obedient servant,

C. D.

Solicitor for the above named A. B.

To

Consul, etc. [*state government*] (*g*).

PROTEST OF A CONSUL AGAINST THE EXERCISE OF
THE JURISDICTION OF THE COURT (*h*).

1. I, the undersigned, am the Consul of [*state government*] at

2-3. [*Set out in numbered paragraphs the facts upon which the Consul relies in support of his protest.*]

4. Under the above circumstances I therefore respectfully submit that this Honourable Court should not entertain the plaintiff's claim, and as Consul of it is my duty respectfully and formally to protest against the exercise of the jurisdiction of this Honourable Court in and

(*g*) A copy of the notice should be annexed to the affidavit to lead the warrant: *Wms. & B.* 246.

(*h*) This protest is accompanied by an affidavit verifying and somewhat amplifying it; *The Larietta, sup.*, and should the plaintiff desire to have any chance of inducing the Court to entertain the action, he answers the Consul's reasons also by affidavit. And in the case of foreign seamen the expenses of their return to their own country are taken into consideration: *Ibid.*

about the said action, because [*summarise the reasons of the Consul*].

Signed and sealed with the official seal of this
Consulate in the day of 18 .

[L.S.]

T. C.
Consul, (i).

SALES UNDER ORDER OF COURT.

CONDITIONS OF SALE.

The following are the usual conditions of sales by the marshal under a commission of sale subject to any variation as the judge may direct, viz.:

Conditions of Sale.

1. The buyer is to take the said vessel, her tackle, apparel, and furniture, with all faults, in the condition in which they now lie without any allowance or abatement for weights, lengths, qualities, quantities, errors of description, or any defects, or injuries whatsoever, and neither the age, tonnage, or description of the vessel or stores as expressed in the inventories, are warranted.

2. The buyer is immediately to pay into the hands of W. B., Esq., marshal of the said court [or his deputy] one-fourth part of the purchase money, and ten dollars to the auctioneer to bind the bargain, and the remainder thereof within fourteen days unto the marshal [or his deputy]; and upon payment thereof to be put into possession of the said vessel, her tackle, apparel and furniture, as aforementioned. But in case of non-payment of the remainder of the purchase money within the time before-mentioned, the deposit aforesaid of one-fourth part shall and is hereby declared to be forfeited, and the said vessel, her tackle, apparel and furniture, may again be exposed to sale and sold at public or private sale, and the deficiency, if any, by such re-sale shall be made good by the defaulter at

(i) See Form of Consul's protest in *The Nina*, L. R. 2 A. & E. 44.
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this sale, together with the expenses attending such re-sale; and neither the judge, nor the marshal, or his deputy, nor the broker shall be sued for the said money paid in part and forfeited as aforesaid: but the buyer so neglecting shall be liable for all loss, costs and damages which may arise thereby.

3. The buyer, if he requires it, may have the marshal's [or his deputy's] bill of sale for the said vessel.

4. The vessel is at the risk of the buyer immediately after he receives an order for the delivery of the vessel.

Lastly, the marshal [or his deputy] is to be the judge who is the lawful buyer of the said vessel. Not less than dollars to be advanced at each bidding (j).

The bill of sale given by the marshal is in the form prescribed by *The Merchant Shipping Act*, but refers to the order or decree and commission under which the sale takes place.

Where the sale is in an action by a mortgagee, if he desires to bid as a purchaser, an application should be made to the judge for leave (k).

Though a ship is in possession of the sheriff, Admiralty will sell it (l). The title to a British ship is not affected by the delivery of a writ to the sheriff against the owners (m).

RANKING OF CLAIMS.

Claims against the *res* rank in the inverse order of their attachment: the last in time is the first to be satisfied. Subject to this general principle their respective places are: I. Salvage of life. II. Salvage of property. III. Claims for damage. IV. Wages of seamen. V. Wages and disbursements of master. VI. Pilotage and Towage. VII. Bottomry. VIII. Mortgage. IX. Necessaries supplied to foreign ships (n).

(j) Wms. & B. 313, n.

(k) *The Wilsons*, 1 W. Rob. 174.

(l) *The Flora*, 1 Hagg. 298, 300.

(m) *Cahoon v. Morrow*, 1 Old. (Nov. Scotia), 148.

(n) See further as to priorities the various headings, *ante*, and Boyd's M. S. Laws, 418; and Cootes Ad., 2nd Ed. 134-141.

Where a maritime lien exists the court gives preference to the party who is first in possession of a decree of the court (o).

Where parties, who were owners of a vessel and of part of the cargo lost in collision, sued the wrong-doing vessel and obtained a decree, and on the same day that the decree was pronounced, the owners of the rest of the cargo sued the same vessel, it was held that the court has no jurisdiction to order a rateable distribution, and thereby take away the priority of the *prior petens* (p).

Subject to this right, and to preference in respect of posterior date, all liens suable in Admiralty, and arising *ex contractu* or *quasi ex contractu*, as for wages, bottomry, pilotage, and salvage, are esteemed to be equal and co-ordinate (q).

JURISDICTION UNDER THE INLAND REVENUE ACT.

The provisions of this Act (r) which gave Vice-Admiralty Courts jurisdiction in prosecutions for penalties and forfeitures incurred thereunder were held by the Supreme Court of Canada to be *intra vires*, and a writ of prohibition granted by the Supreme Court of Nova Scotia against the Vice-Admiralty Court therein was quashed (s).

The Judicial Committee of the Privy Committee reversed the decree of the Vice-Admiralty Court of Sierra Leone in the proceedings *in rem* for breach of the revenue laws of the Colony, condemning the goods seized, and the owners in penalties, so far as the penalties were concerned, with costs, it appearing that though the claim of the owner of the goods was rightly rejected, because he failed to comply with the rule of the Vice-Admiralty Court requiring security for costs, yet that such rule did not apply as regarded the penalties, against which he was entitled to be heard in the court below without giving any such security.

(o) *The William F. Safford*, Lush. 71.

(p) *The Saracen*, 6 Moo. P. C. 56.

(q) Abbott on Shipping, 13th Ed., 871.

(r) R. S. C. c. 34, s. 113.

(s) Att'y-Gen. v. Flint, 16 S. C. R. 707, 1883.

And permission was given to appeal *in forma pauperis* in a case in which the appellant was not heard in the court below and refused leave to appeal to Her Majesty in Council, the decision being in fact *ex parte* (t).

REGISTRATION OF SHIPS.

The ownership, measurement and registry of British vessels are, in the United Kingdom regulated by Part II. of *The Merchant Shipping Act* (Imp.), which second part, by section 17, is made to apply to the whole of Her Majesty's dominions, and *inter alia* to Canada, excepting in so far as it may have been repealed by Dominion legislation, approved by Her Majesty in Council (u).

QUALIFICATIONS FOR OWNERSHIP OF BRITISH SHIPS.

It is provided in Part II. of *The Merchant Shipping Act*, made applicable by section 17 to the whole of Her Majesty's Dominions, as follows:—

18. No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description, that is to say:—

(1) Natural-born British subjects:

Provided that no natural born subject who has taken the oath of allegiance to any foreign sovereign or state shall be entitled to be such owner as aforesaid, unless he has subsequently to taking such last-mentioned oath taken the oath of allegiance to Her Majesty, and is and continues to be during the whole period of his so being an owner resident in some place within Her Majesty's dominions, or if not so resident, a member of a British factory, or partner in a house actually carrying on business in the United Kingdom or in some place within Her Majesty's dominions;

(t) *George v. The Queen*, L. R. 1 P. C. 389.

(u) As to imperial control over colonial legislation, see Todd's *Parliamentary Government in British Colonies* (1880), 125-149.

- (2) Persons made denizens by letters or denization, or naturalised by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or Ordinance of the proper legislative authority in any British possession;

Provided that such persons are and continue to be during the whole period of their so being owners resident in some place within Her Majesty's dominions, or if not so resident, members of a British factory, or partners in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions, and have taken the oath of allegiance to Her Majesty subsequently to the period of their being so made denizens or naturalised;

- (3) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom or some British possession.

No ship by the Act required to be registered shall, unless registered, be recognized as a British ship. Section 19, *M. S. Act*.

Falsely assuming the British National character, or sailing under a certificate of registry illegally obtained renders the ship liable to forfeiture: *M. S. A. sec. 103 (v)*.

An alien is not entitled to own or register a ship or vessel of the United States: *Parsons on Shipping, Am., Vol. I. pp. 28-9.*

As to unqualified owner becoming entitled by transmission, *vide ante*, p. 202.

The Dominion Act, R. S. C. c. 72, s. 52, expressly repeals so much of *The Merchant Shipping Act* relating to ships registered in Canada as is inconsistent with it.

Ship.—The meaning attached to the word "ship," by the interpretation clause of the Rules, *ante*, p. 13, viz.: that it "*shall include every description of vessel used in navigation not propelled by oars only*,"—corresponds with that in *M. S. Act, 1854*, and *The A. C. Act. 1861*, and the

(v) See *The Queen v. The S. G. Marshall*, 1 P. E. I. Rep. 316. 1870.

Canadian Statutes respecting Registration of Ships, Seamen, Navigation Pilotage, Wrecks and Salvage, and other statutes,—R. S. C. caps. 72, 74, 75, 76, 77, 79, 80, 81, 82, 86, etc., with the addition of the word "only" in the clause cited.

Yachts and Fishing Boats.—Pleasure yachts not carrying passengers or goods for hire are not subject to the provisions of the Act respecting certificates to masters and mates (*w*); nor ships employed solely in fishing, or barges or other vessels having neither masts, sails nor rigging, and not being steamships (*x*).

A hopper barge not furnished with any means by which she could be propelled, and used only for dredging purposes, was held to be "a ship or boat" within the meaning of *The M. S. Act*, s. 458 (*y*).

It has been held in the case of a vessel built by a British subject for a foreign purchaser to be delivered to such purchaser at a foreign port—and which was, when completed, assigned by the builder for valuable consideration to the plaintiff. The assignment not being registered under the *Bills of Sale Act*, nor under the *M. S. Act, 1854*, s. 57, nor the vessel registered as a British ship under s. 19 of the latter Act; it was held (1) that the assignment did not require registration under the *Bills of Sale Act*; (2) that the ship was not a British ship within the meaning of the *M. S. Act, 1854*, and that an assignment of her, need not be by bill of sale under the 55th section, and did not require registration under the 57th section of that statute (*z*).

Electricity.—The provisions of the *Merchant Shipping Act, 1854*, and the Acts amending the same, with respect to steamships, apply to ships propelled by electricity or other mechanical power, with such modifications as the

(*w*) R. S. C. c. 73, s. 13.

(*x*) *Ibid.*

(*y*) *The Mac*, 7 P. D. 38; See *The Hector*, 24 L. J. U. C. 281.

(*z*) *The Union Bank of London v. Lenanton*, L. R. 3 C. P. D. (C. A.) 243; 47 L. J. C. L. (C. A.) 409.

Board of Trade may from time to time prescribe for purposes of adaptation (a). Secs. 1-3.

The register of a ship under the *M. S. Act* is *prima facie* evidence of ownership (b), but its statutory effect may be displaced by proof of what the facts really are (c).

DOMINION STATUTE RESPECTING THE REGISTRATION AND A.D. 1886.
CLASSIFICATION OF SHIPS.

[R. S. C. c. 72.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. In this Act, unless the context otherwise requires,— Interpretation.

(a) The expression "the Minister" means the Minister of Marine and Fisheries; "Minister."

(b) The expression "ship" includes every description of vessel used in navigation not propelled by oars; "Ship."

(c) The expression "ships belonging to Her Majesty" includes ships the cost of which has been defrayed out of the Consolidated Revenue Fund of Canada, and ships described as the property of Canada by the one hundred and eighth section of "*The British North America Act, 1867*;" "Ships belonging to Her Majesty."

(d) The expression "master" includes every person having command or charge of any ship. 36 V. c. 128, s. 4. "Master."

2. Nothing in this Act shall apply to ships belonging to Her Majesty. 36 V. c. 128, s. 5. Exemption of H. M. Ships.

3. This Act is divided into four parts:

The first part, relating to the measurement and registration of ships; Division of Act.

The second part, relating to the licensing of small ships and other vessels; Licensing of small ships.

The third part, relating to security for advances on ships in course of construction; Advances.

The fourth part, relating to the inspection and classification of ships. 36 V. c. 128, s. 6. Inspection and classification.

(a) 52-53 V. c. 46, s. 5.

(b) M. S. A. s. 107; Abbott on Shipping, 13th Ed., 56, 938.

(c) *Baumwoll Manufactur von Carl, Scheibler v. Furness*, 62 L. J. N. S. 201, H. L. (1893).

SECS. 4-6.

PART I.

MEASUREMENT AND REGISTRATION OF SHIPS.

Ships exempt
from the pro-
visions of this
part of Act.

4. The following ships are exempt from the provisions of this part of this Act, that is to say:—

(a) Ships having a whole or fixed deck, not propelled wholly or in part by steam, and not exceeding ten tons burthen;

(b) Ships not propelled wholly or in part by steam, and not having a whole or fixed deck, whatever their burthen. 36 V. c. 127, s. 7.

What ships
only shall be
recognized in
Canada as
British ships

5. No ship propelled either wholly or in part by steam, whatever her tonnage, and no ship not propelled wholly or in part by steam, of more than ten tons burthen and having a whole or fixed deck, although otherwise entitled by law to be deemed a British ship, shall, unless she is duly registered in the United Kingdom, or in Canada, or some other British possession under "*The Merchant Shipping Act, 1854*," and the Acts amending the same or under the provisions of this Act, be recognized as a British ship, or be admitted to the privileges of a British ship in Canada; but any ship which was duly registered under the provisions of the "*Act respecting the registration of inland vessels*," forming chapter forty-one of the Consolidated Statutes of the late Province of Canada, need not be registered in pursuance of the provisions of this Act, except for the purpose of enabling her to proceed to sea as a British ship:

Case of vessels
registered
under c. 41 of
Con. Stat. Can-
ada provided
for.

Liabilities of
unregistered
ships.

2. No ship which was registered by the said "*Act respecting the Registration of Inland Vessels*," shall, unless she was duly registered under the provisions of the said Act, be recognized in Canada as a British ship. 36 V. c. 128, s. 8 and s. 14, *part*.

No clearance
unless certifi-
cate is pro-
duced.

6. No officer of customs shall grant clearance to any ship required to be registered under the provisions of the Act in the next preceding section mentioned, or of this Act, for the purpose of enabling her to proceed on a voyage,

unless the master of such ship, upon being required so to do, produces to him the proper certificate of registry: and if any such ship attempts to proceed on a voyage as a British ship, without a clearance, any officer of customs may detain such ship until such certificate is produced to him. 36 V. c. 128, s. 14, *part*.

Secs. 7-10.

Ship in such case may be stopped.

7. When it appears to the Lieutenant-Governor of any Province of Canada, that by reason of special circumstances it is desirable that permission should be granted to any British ship to pass, without being previously registered, from any port or place within the Province of which he is Lieutenant-Governor, to any other port or place in Her Majesty's Dominions, such Lieutenant-Governor may grant a pass accordingly, and such pass shall, for the time and within the limits therein mentioned, have the same effect as a pass granted by the Governor-General, or as a certificate of registry; and such Lieutenant-Governor shall forward, without delay, to the Governor in Council, a copy of each pass granted by him. 36 V. c. 128, s. 9.

Lieutenant Governors may grant passes to British ships.

8. The Governor in Council may appoint at and for every port at which he deems it expedient to authorize the registry of ships, the collector or other principle officer of customs who shall be the registrar for all the purposes of "The Merchant Shipping Act, 1854," and the Acts amending the same, and of this Act. 36 V. c. 128, s. 9.

Governor in Council may appoint registrars of shipping.

9. The Governor in Council may appoint at every such port, and at any other port in Canada, an officer to superintend the survey and measurement of ships in conformity with the said Acts and this Act; and the same person may be appointed both the registrar and surveyor at any such registry port. 36 V. c. 128, s. 11.

also surveyors.

10. Such surveyor shall be entitled to such fees for the measurement of ships about to be registered for the first time under this Act, or requiring measurement for the purposes of registry, and to such travelling expenses, when required to travel for the purpose of making any such measurement as the Governor in Council, from time to time, sees fit to

Surveyor's fees and travelling expenses.

Secs. 11-15.

By whom
paid.

establish; and such fees and travelling expenses shall be paid to such surveyor by the persons requiring his services; and any surveyor may, in any case, withhold his certificate of measurement, or any other document that is required of him, until his fees and travelling expenses are paid; and such fees shall be in lieu of all salary and other remuneration whatsoever for such services. 36 V. c. 128, s. 12, *part*.

Exception.

11. No fees shall be charged in Canada for registering vessels or recording transactions relating to the registry of vessels under this Act or under "*The Merchant Shipping Act, 1854*," or the Acts amending the same. 36 V. c. 128, s. 12, *part*.

Case of con-
flicting claims
to obtain
registry of a
ship.

12. When two or more persons claim to be builders or owners of any ship, or present the builder's certificate to the registrar of shipping at any port in Canada for the purpose of obtaining registry for such ship under the provisions of section forty of "*The Merchant Shipping Act, 1854*," and are not agreed as to who is the builder or owner of the same, such registrar may refuse to grant registry for such ship, and may summon witnesses, administer oaths, demand any books or papers and receive any evidence relating to such ship. 36 V. c. 128, s. 13, *part*.

Submission to
Governor in
Council.

13. A copy of such evidence taken, and a report thereon, shall be submitted by him to the Governor in Council, who shall issue such directions in the case as to the giving of security to the other claimant or claimants, or any other matter or thing, as he deems necessary; and registry shall be granted in pursuance of such directions and not otherwise. 36 V. c. 128, s. 13, *part*.

Proof of loss,
etc., of certi-
cate.

14. No new certificate of registry of a ship registered in Canada shall be granted in Canada, under section forty-eight of "*The Merchant Shipping Act, 1854*," without proof on oath that the certificate of registry of such ship has been lost, mislaid or destroyed. 36 V. c. 128, s. 15.

Wrecked ship
may be regis-
tered by au-
thority of the
Governor in
Council.

15. If any British or foreign registered ship is either actually or constructively wrecked, and the register thereof is closed and the certificate of registry is delivered up to the

proper officer and cancelled; or, if any ship, sailing under a pass from the Governor-General, or under a pass from a Lieutenant-Governor under this Act, is either actually or constructively wrecked on the voyage, and during the time and within the limits mentioned in such pass, the Governor in Council may direct that such ship may be registered as a British ship in any port in Canada at and for which there is a registrar of shipping, on proof being adduced to the satisfaction of the Governor in Council that such ship has been thoroughly repaired and made seaworthy, and also that all the transactions connected with the wreck, condemnation and sale of such ship were in good faith, and that all the requirements of the law have been complied with; but no registrar of shipping shall register any such ship without the authority of the Governor in Council. Secs. 16-18.

Proviso.

16. Every person may, upon payment of a fee of twenty cents, have access to the register of any ship registered in Canada, at the port of registry of such ship, at any reasonable time during the hours of official attendance of the registrar; and such fees shall, from time to time, as directed by the Governor in Council, be paid by the registrars receiving the same to the Minister of Finance and Receiver-General, and shall form part of the Consolidated Revenue Fund of Canada. Access to registers of ships. 36 V. c. 128, s. 16.

17. Subject to the provisions of this Act, collectors or other principal officers of customs in Canada, not being registrars of shipping, shall have the same power and be under the same obligations as registrars of shipping under "*The Merchant Shipping Act, 1854*," to indorse, from time to time, on the certificate of registry of any ship at any port in Canada where the said ship is, any change of master which takes place at that port. Collectors of customs to indorse changes of masters on certificates. 36 V. c. 128, s. 17.

18. Notwithstanding anything to the contrary contained in the forty-sixth section of "*The Merchant Shipping Act, 1854*," if any registrar of shipping, or collector or other principal officer of the customs at any port or place Indorsement of change of master by registrar or collector, on what proof to be made.

Sec. 18.

in Canada receives conflicting directions from owners of any ship registered in Canada as to a change of the master of such ship, such registrar or collector or other principal officer may refuse to endorse a memorandum of the change of master on the certificate of registry of such ship until he receives a declaration, according to the form in the first schedule to this Act, or as near thereto as circumstances permit, from the registered owners representing a majority of shares in such ship, or from their duly appointed agents, setting forth the name of the person appointed in lieu of the former master who shall be named in such declaration :

Declaration,
how made
and sub-
scribed.

2. The said declaration shall be made and subscribed in the presence of the registrar or collector of customs, if the declarant or declarants reside within five miles of the custom house of the port of registry, but if beyond that distance, in the presence of any registrar or collector of customs in Her Majesty's dominions, or of any justice of the peace :

Further evi-
dence may be
required.

3. In addition to such declaration, the registrar of shipping or collector of customs at the port where the change is requested to be indorsed, may require to be produced a certified copy of the register, or such other evidence as he deems necessary, as proof of the ownership of the ship :

Further pro-
visions if the
ship is at or
near such port.

4. If the ship is at or near such port, he shall, on the demand of a majority of the owners thereof, require the master or any other person in possession of the certificate of registry to produce and deliver the same to him ; and in default of the same being forthwith produced and delivered up to him, he may detain the ship, and not allow her to proceed to sea until the same has been produced and delivered up to him :

Penalty for
refusing to
deliver up
certificate.

5. Every person who has possession of the certificate of registry of a ship registered in Canada, and who refuses or neglects to produce and deliver up the same to any registrar of shipping or collector of customs requiring the same to be produced and delivered up to him, under the provisions of this section, shall incur a penalty of five hundred dollars. 36 V. c. 128, s. 19.

19. Every registrar of shipping and every collector of customs shall keep a record of every indorsement of a change of master made by him on the certificate of registry of a ship, and shall specify in such record the date of such indorsement, the name of the ship, the official number of the ship, the port of registry of the ship, the name of the old master, the name of the new master, and whether or not he has a certificate of competency or a certificate of service, and, if he has either of such certificates, the number thereof; and every such record shall be kept in the office of the registrar of shipping or collector of customs making the same, or his successor as such, and shall, at all times during the usual office hours, be open to all persons for inspection, without fee or reward. 36 V. c. 128, s. 20.

Secs. 19-21.

Records of indorsements of changes of masters.

20. Whenever the managing owner, or any of the managing owners (if there are more than one) of a ship registered in Canada is changed, or, if there is no managing owner, whenever the ship's husband is changed, the newly appointed managing owner or owners or ship's husband shall forthwith give notice of such change to the registrar of the ship's port of registry, who shall register the same accordingly; and every managing owner or ship's husband who fails to comply with the requirements of this section shall incur a penalty not exceeding one hundred dollars. 36 V. c. 128, s. 21.

Change of managing owner or ship's husband to be registered.

21. The following rules shall be observed with respect to the names of ships registered in Canada:—

Rules as to the names of ships.

(a) A ship shall not be described by any name other than that by which she is, for the time being, registered;

(b) No change shall be made in the name of a ship without the previous permission of the Governor in Council, the application for which shall be made in writing; if the application is made on reasonable grounds, the Governor in Council may entertain the same, and may thereupon require notice thereof to be published in such form and manner as he thinks fit; and upon such permission being granted, the ship's name shall forthwith be altered in the

How change may be made.

Sec. 22. register book, in the ship's certificate of registry, and on her bows and stern ;

Name changed without authority to be restored.

(c) If, in any case, it is shown to the satisfaction of the Governor in Council that the name of any ship has been changed without his previous permission, he may direct that her name be altered to that which she bore before such change, and the name shall be altered in the register book, in the ship's certificate of registry, and on her bows and stern accordingly ;

In new registry previous name to be adhered to.

(d) If a ship which has once been registered has ceased to be so registered, no person, unless he is ignorant of such previous registry (proof of which shall lie on him), shall apply to register, and no registrar shall knowingly register such ship, except by the name by which she was previously registered, unless he has the permission of the Governor in Council :

Penalty for contravention.

2. Every person who acts, or suffers any person under his control to act in violation of this section, or who omits to do, or suffers any person under his control to omit to do anything required by this section, shall, for each offence incur a penalty not exceeding four hundred dollars :

Ships may be detained.

3. Any registrar or principal officer of customs may detain such ship until the provisions of this section are complied with. 36 V. c. 128, s. 22.

Statements to be made by the master of a British ship to which a casualty has happened.

22. Whenever a shipping casualty happens anywhere in the case of a ship registered in Canada, or within the limits of Canada in the case of any other British ship, the master, or if the master is dead, the chief surviving officer, and also every such other person belonging to the ship as the minister, from time to time, directs, shall, within twenty-four hours of his first landing in Canada after the happening of such casualty, attend and submit himself for examination at the office of the principal officer of customs residing at or near the place where such casualty occurred, if the same occurred on or near the coasts of Canada, or any island or place adjacent thereto, but at or near the

place of such landing, if the casualty occurred elsewhere, unless he has been previously examined or excused from attending for examination by any other principal officer of customs residing at or near either of such places, or by any receiver of wreck in the United Kingdom; and if any master, officer or other person makes default in obeying the provisions of this section, he shall incur a penalty not exceeding two hundred dollars. 36 V. c. 128, s. 23.

Secs. 23-25.

23. Whenever the managing owner of any ship registered in Canada has information that such ship is lost, or in consequence of her non-arrival or otherwise has reason to apprehend that she is lost, he shall forthwith send notice of such loss or apprehended loss to the Minister, and shall upon requisition by the Minister, furnish to him such information as he is required and is able to furnish respecting such ship, and the loss thereof, and the property and persons on board; and if he makes default in obeying the provisions of this section he shall incur a penalty not exceeding two hundred dollars. 36 V. c. 128, s. 24.

Notice of loss of ships registered in Canada to be given to the Minister.

24. Every registrar of shipping shall, on or before the twentieth day of January in each year, make and forward to the Minister a return, in such form and containing such particulars as the Minister, from time to time, directs, of all existing ships of which the registry remained in his registry books, on the thirty-first day of December then last. 36 V. c. 128, s. 25.

Registrar to make annual return to Minister.

PART II.

LICENSING OF SMALL SHIPS AND OTHER VESSELS.

25. The master, owner or managing owner, or one of the managing owners (if there are more than one) of every vessel not a ship within the meaning of this Act, which is

Ships not required to be registered, and certain other vessels to be licensed

Sec. 26.

employed in or owned for the purpose of fishing, trading or carrying loads of any kind in any of the waters of Canada, shall, within one month from the date of her being so employed or owned for such purpose by him, or of her being built or acquired for such purpose,—and the master owner, managing owner or one of the managing owners (if there are more than one), of every ship exempted from the provisions of the first part of this Act, shall take from the collector or other principal officer of the customs at some port or place in Canada a license, which it shall be the duty of the collector or other principal officer of the customs at every port or place in Canada to furnish, without fee or reward, to every person applying for the same at his custom house or office in office hours, and complying with the provisions of this section in respect of such application; and such license shall be in the form of, and shall contain the particulars provided for in form B in the second schedule to this Act. 36 V. c. 128, s. 30.

Form of
license.

Proceedings
for obtaining
such license.

26. Upon any such application being made to a collector or other principal officer of the customs the following provisions shall take effect:—

Blank form to
be furnished.

(a) The collector or principal officer of customs shall furnish the applicant gratis with a printed blank for a declaration in the form A in the second schedule to this Act:

How filled up.

(b) The applicant shall fill up the said form with true statements, in their proper places, of the length, breadth, depth and approximate tonnage of the ship or vessel, the names of the owners thereof, and, if the property in the ship or vessel is divided into shares, the number of shares held by each owner, and shall subscribe the same and return it to the officer;

License to be
filled up.

(c) The officer shall then fill up a license with the particulars stated in the declaration, adding thereto the name of the port and the number of the license, which shall be consecutive for each port, and he shall sign such license and hand the same to the applicant;

(d) The officer shall record the particulars contained in the license in a book to be kept by him for that purpose. Secs. 27-30.
Record to be kept.
36 V. c. 128, s. 31.

27. Every ship or vessel so required to be licensed shall, at all times, have the name of the port or place at which she was last licensed, and the number of her last license painted on her bow or stern in letters not less than three inches long, of light color, on a dark ground, and such port or place shall be considered, for the time being, her port of license. Name of port and number of license to be painted on ship or vessel.
36 V. c. 128, s. 32.

28. Whenever the property in a ship or vessel so required to be licensed passes wholly into new hands, the master or the new owner or managing owner, or one of the new managing owners, if there are more than one, shall within one month after such change of ownership as aforesaid, take out a new license at some port or place in Canada, and upon receiving the same shall deliver up the former license, if in his possession, to the collector or other principal officer of the customs at such port or place. On change of owner, new license to be taken out.
36 V. c. 128, s. 33.

29. Every master, owner or managing owner of any ship or vessel so required to be licensed, who neglects, without reasonable cause (the proof of which shall lie upon him), to apply for and take out a license for such ship or vessel within any delay allowed by this Act for that purpose, or who neglects to keep the name of her last port of license and the number of her last license painted on her bow or stern as aforesaid, shall incur a penalty of twenty dollars. Penalty for neglecting to obtain license
36 V. c. 128, s. 34.

30. Every officer of customs authorized by this part of this Act to license ships and vessels, shall, on or before the twentieth day of January in each year, make and forward to the Minister a return in such form and containing such particulars as the Minister, from time to time, directs, of all ships and vessels licensed by him during the year ending on the thirty-first day of December then last. Return of ships and vessels licensed to be sent to the Minister annually.
36 V. c. 128, s. 35.

Secs. 31-33.

PART III.

SECURITY FOR ADVANCES ON SHIPS IN COURSE OF
CONSTRUCTION.

Ships about to be built or being built may be recorded by registrar of shipping.

31. A ship about to be built or being built may be recorded under a temporary name by the registrar of shipping at or nearest to the port at which she is about to be built or is being built; and any builder desirous of raising money by a mortgage on any ship about to be built or being built, shall furnish to the registrar of shipping at the port at or nearest to which she is about to be built or is being built, a full description of such ship, and a statement of the port at which she is intended to be registered, according to the form A in the third schedule to this Act, and shall indicate the ship to be built or being built by painting on a board near the place of such building in his ship yard, on a dark ground, in white or yellow figures and letters of a length not less than four inches, the number given to him by the proper registrar of shipping for that purpose, the temporary name of the ship, and the name of the port at which she is intended to be registered. 36 V. c. 128, s. 36.

Ship so recorded may be made security for a loan.

32. A ship about to be built or being built, and so recorded as aforesaid, may be made security for a loan or other valuable consideration; and the instrument creating such security, hereinafter termed a "mortgage," shall be in the form B in the third schedule hereto, or as near thereto as circumstances permit; and on the production of such instrument, the registrar of shipping at the port at which the ship is recorded shall enter the same in a record book to be kept by him for that purpose. 36 V. c. 128, s. 37.

Mortgages to be recorded in the order of their production to the registrar.

33. Every such mortgage shall be recorded by the proper registrar of shipping in the order of time in which the same is produced to him for that purpose; and such registrar of shipping shall, by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record. 36 V. c. 128, s. 38.

34. Whenever any recorded mortgage has been discharged the proper registrar of shipping shall, upon the production of the mortgage deed, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the record book to the effect that such mortgage has been discharged; and upon such entry being made, the estate, if any, which passed to the mortgagee shall vest in the said person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made. 36 V. c. 128, s. 39.

Secs. 34-37.

Proceedings when such mortgage is discharged.

35. If two or more mortgages are recorded in respect of the same ship, the mortgagees shall, notwithstanding any express, implied or constructive notice, be entitled in priority one over the other, according to the date at which each instrument is recorded in the record book, and not according to the date of each instrument. 36 V. c. 128, s. 40.

Priority of mortgages.

36. A mortgagee shall not, by reason of his mortgage, be deemed to be the owner of a ship, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship, except in so far as is necessary for making such ship available as security for the mortgage debt. 36 V. c. 128, s. 41.

Mortgagee not to be deemed owner.

37. Every mortgagee may absolutely dispose of the ship in respect of which he is recorded as such mortgagee and give effectual receipts for the purchase money; but if there are more persons than one recorded as mortgagees of the same ship, no second or subsequent mortgagee shall, except under the order of a court capable of taking cognizance of such matters, sell such ship without the concurrence of every prior mortgagee; and every bill of sale, when duly executed, shall be produced to the proper registrar of shipping, who shall enter the particulars thereof in the record book, and shall indorse on the bill of sale the fact of such entry having been made, with the date and hour thereof; and all bills of sale shall be entered in

Mortgagee to have power of sale.

Secs. 38-40. the record book in the order of their production to the registrar of shipping. 36 V. c. 128, s. 42.

Transfer of mortgages.

38. A recorded mortgage of any ship may be transferred to any person; and the instrument creating such transfer shall be in the form C in the third schedule hereto; and on the production of such instrument the registrar of shipping shall enter in the record book the name of the transferee as mortgagee of the ship therein mentioned, and shall, by memorandum under his hand, record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record. 36 V. c. 128, s. 44.

Transmission of interest of mortgagee by death, insolvency or marriage.

39. If the interest of any mortgagee in any ship recorded under this Act becomes transmitted in consequence of death or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration of the person to whom such interest has been transmitted, made in the form D in the third schedule hereto, and containing a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed in the presence of the registrar of shipping at the port at which such ship has been recorded under this Act, if the declarant resides at or within five miles of the custom house of the port, but if beyond that distance, in the presence of any registrar of shipping, collector of customs or justice of the peace. 36 V. c. 128, s. 45.

Proof of such transmission.

40. If such transmission has taken place by virtue of the insolvency of any registered mortgagee, the said declaration shall be accompanied by such evidence as is for the time being receivable in courts of justice as proof of the title of persons claiming under any insolvency; and if such transmission has taken place by virtue of the marriage of a female mortgagee, the said declaration shall be accompanied by a copy of the register of such marriage, or other legal evidence of the celebration thereof, and shall

declare the identity of the said female mortgagee; and if such transmission has taken place by virtue of any testamentary instrument or by intestacy, then, in any Province of Canada, excepting Quebec, the said declaration shall be accompanied by the probate of the will or the letters of administration, or an official extract therefrom, and in the Province of Quebec, by the will or any copy thereof that is evidence of such will by the laws of that Province, or by any such document as by the laws of such Province is receivable in the courts of justice thereof, as proof of the title of any person entitled upon the intestacy.

Secs. 41, 42.

41. The registrar of shipping, upon the receipt of such declaration and the production of such evidence as aforesaid, shall enter the name of the person or persons entitled under such transmission in the record book as mortgagee or mortgagees of the ship in respect of which such transmission has taken place. 36 V. c. 128, s. 46.

Entry of transmitted mortgage.

42. Whenever the building of a ship which has been recorded under this Act is duly completed, the first mortgagee whose claim is unsatisfied may furnish the builder's certificate for such ship, and thereupon the proper officer may grant a certificate of registry under the laws in force in Canada for that purpose:

Certificate of registry of ship when built.

2. All undischarged mortgages recorded under this Act shall be, by the proper registrar of shipping, transferred to and registered under such laws in the register book, in the order and according to the priority in which the same were entered of record under this Act; and the temporary name used for the purposes of this Act, as above provided for, may be changed at the time of granting a certificate of registry:

All recorded mortgages then undischarged to be registered in register book.

3. The registry of all such mortgages shall thus appear, according to their priority in the record book, as if the same had been made or granted under the laws providing for the giving of such certificate of registry: and a fresh instrument of mortgage may be granted for that purpose, according to any form prescribed by law, as a substitute for any mortgage granted under this Act. 36 V. c. 128, s. 47.

Order of registry.

Fresh mortgage.

Secs. 43-45.

Penalty for attempting to take out register at any port other than that where ship is recorded.

43. Every person who is a party to any unsatisfied mortgage on any ship under this Act and who takes out, or attempts to take out, a register for such ship at any port other than the port named on the board in the ship yard in which such ship was built, or in the statement and description in the form A in the third schedule of this Act, furnished to the registrar of shipping by whom such ship was recorded under this Act, or in any mortgage on such ship under this Act, shall incur a penalty of two thousand dollars, which shall be recoverable, with costs, by the person who first sues for the same in any court of competent jurisdiction, in any Province in Canada in which the offender is served with process. 36 V. c. 128, s. 48.

When certificate of survey may be delivered up by surveyor.

44. No surveyor of shipping who is not also a registrar of shipping shall deliver up any certificate of survey of any ship which he has surveyed for measurement to any person except the registrar of shipping at the port at or for which he is surveyor, and at which such ship is recorded under this Act, until the registrar of shipping at such port has endorsed on the back of such certificate either a statement to the effect that there is no undischarged mortgage on such ship recorded in his office under this Act, or a statement of the amount and other particulars, and if more than one, the number of the undischarged mortgages, if any, on such ship recorded in his office under this Act; and every registrar of shipping shall indorse one of such statements, according to the facts of each case, on every certificate of measurement presented to him for that purpose by any surveyor of shipping. 36 V. c. 128, s. 49.

Indorsement by registrar.

Registrar who is also surveyor to indorse a statement on certificate of survey.

45. If the registrar of shipping at any port at which any ship is recorded under this Act is also surveyor of shipping at or for such port, he shall indorse on every certificate of survey of every ship which he has surveyed for measurement, before he delivers the same to any person, either a statement to the effect that there is no undischarged mortgage on such ship recorded in his office under this Act, or a statement of the amount and other particulars, and, if more than one, the number of the undischarged

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mortgages, if any, on such ship recorded in his office under Secs. 46-50.
this Act. 36 V. c. 128, s. 50.

46. The Governor in Council may establish a scale of Scale of fees.
fees for recording ships and mortgages and other transac-
tions, and for other services to be performed under this Act
prior to the registry of any ship under *The Merchant*
Shipping Act, 1854, or any Act or Acts amending or
applying to the same. 36 V. c. 128, s. 51.

47. Nothing in this part of this Act shall take away Saving of right of owner.
the right of the owner to his action of account, or such
other remedy as he has by law against the advancer.
36 V. c. 128, s. 52.

48. This part of this Act shall not be construed in such Act not to affect mode of executing deeds in Quebec.
a way as to affect the mode of executing deeds in the Pro-
vince of Quebec, but deeds and documents executed in the
said Province may be made and passed in the form and
according to the manner prescribed in the said Province.
36 V. c. 128, s. 53.

PART IV.

INSPECTION AND CLASSIFICATION OF SHIPS.

49. The Governor in Council may make such rules and Governor in Council may make regulations for the classification of ships built or registered in Canada.
regulations as he considers necessary for the inspection and
classification of vessels built or registered within Canada
and may, from time to time, alter and amend the same;
and may, from time to time, appoint such officers as are
necessary to carry out this part of this Act, and prescribe
the duties of such officers, who shall be under the control
of the minister. 36 V. c. 128, s. 54.

50. The Governor in Council may, by such rules and And a tariff of fees therefor.
regulations, establish a table of fees to be paid for such

Secs. 51, 52. inspection and classification, and may thereby authorize the granting of certificates of classification in such manner as is therein prescribed. 36 V. c. 128, s. 55.

Publication of regulations.

51. All rules and regulations made under this part of this Act shall be published in the *Canada Gazette*. 36 V. c. 128, s. 56.

REPEAL.

Repealing clause.

Imp Stat 17 and 18 V c. 101.

52. Upon the commencement of this Act, so much of the provisions of the Act of the Parliament of the United Kingdom, known as "*The Merchant Shipping Act, 1854*," and of any Act of the said Parliament amending the same and forming and to be construed as part thereof, relating to ships registered in Canada, as is inconsistent with this Act, shall be repealed. 36 V. c. 128, s. 2.

FIRST SCHEDULE.

FORM OF DECLARATION OF OWNER OR OWNERS FOR CHANGE OF MASTERS.

I (or we) of (*residence and occupation*)
being registered owner (*or owners*) of sixty-fourth
shares of the ship of official number
tons register, hereby declare that I (or we) have appointed
A. B. master of the ship above mentioned in the place of
C. D.

Declared before me (a) this day of

(a) See secs. 18 and 48.

Registration of Ships.

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SECOND SCHEDULE.

Form A.

DECLARATION.

I, the undersigned, A. B., of _____ in _____ declare as follows :

I am entitled to take a license for the ship (or vessel, as the case may be) now in this port (or at this place as the case may be), of which the following are the particulars:—

| Measurements. | Feet. | Inches. | Tonnage. | No. of tons |
|---------------|-------|---------|---------------------------|-------------|
| Length..... | | | Approximate tonnage | |
| Breadth..... | | | | |
| Depth..... | | | | |

| Names of Owners (or Name of Owner). | Number of Shares held by each.* |
|-------------------------------------|---------------------------------|
| | |
| | |
| | |
| | |

 Master.
 (or Managing Owner, or Owner,
 as the case may be).

Dated this _____ day of _____ 18 _____

* If the property in the ship or vessel is not divided into shares, this column need not be filled up.

Form B.

No.

Port of Registry.

LICENSE.

This is to certify that the ship (*or vessel, as the case may be*), of which the particulars are herein contained, was this day licensed by me, the collector (*or principal officer, as the case may be*), of customs at _____ under the provisions of the Act intituled "*An Act respecting the Registration and Classification of Ships:*"

| Measurements. | Feet. | Inches. | Tonnage. | No. of tons. |
|---------------|-------|---------|--------------------------|--------------|
| Length | | | Approximate tonnage..... | |
| Breadth..... | | | | |
| Depth | | | | |

| Names of Owners (<i>or Name of Owner</i>). | Number of shares held by each.* |
|--|---------------------------------|
| | |
| | |
| | |
| | |

Dated this day of 18 .

* If the property in the ship or vessel is not divided into shares this column need not be filled up.

THIRD SCHEDULE.

Form A.

DESCRIPTION OF SHIP PROPOSED TO BE BUILT.

| TEMPORARY NAME. | Port of Record. | Propelled. |
|-----------------|-----------------|------------|
| | | |

| | |
|----------------------|------------------|
| Number of decks..... | Build |
| Number of masts..... | Gallery |
| How rigged | Head |
| Stern | Frame work |

ESTIMATED MEASUREMENT.

| | Feet. | Tenths. | | Tons. |
|---------------|-------|---------|---------------------------|-------|
| Length | | | Under Deck | |
| Breadth | | | Closed in | |
| Depth | | | Space between decks | |
| | | | Poop | |
| | | | Round House | |

I, the undersigned (*name and residence*), ship builder, declare that I propose to build a ship, the particulars of which are contained in the above description, in the (*here describe the place, what ship yard, where situated and to whom belonging*), and that I intend to launch the said ship on or about the day of 18 and to register her at the port of

(Signed),

Dated at the day of 18

In the presence of)

Form B.

MORTGAGE (TO SECURE ACCOUNT CURRENT, ETC.).

For

*

Port of

* (Steamer or sailing).

| Record No. | Where building. | When intended to be Launched. | Port of intended Registry. |
|------------|-----------------|-------------------------------|----------------------------|
| | | | |

| Intended to Measure. | Intended Tonnage and Temporary Name. |
|-------------------------------|--------------------------------------|
| Length, Breadth, Depth, | Tonnage, Name, |
| feet feet feet | |

Whereas (state that there is an account current between mortgagor and mortgagee (describing both), and describe the nature of the transaction so as to show how the amount of principal and interest due at any given time is to be ascertained, and the manner and time of payment).

Now I, (or we), the undersigned, (describe them) in consideration of the premises for (myself or ourselves) and (my or our) heirs, covenant with the said (name him or them) and (his or their assigns, to pay to (him or them) the sums for the time being due on this security, whether by way of principal or interest, at the times and in the manner above mentioned, and for better securing to the said (name), the payment of such sums as last aforesaid; (I, or we) do hereby mortgage to the said (name) the ship above described.

Lastly, (I, or we), for (myself or ourselves), and (my or our) heirs, covenant with the said (name of him or them) and (his or their) assigns that (I or we) have power to mortgage in manner aforesaid, the above mentioned ship, and that the same is free from incumbrances, save as appear by the record of the said ship.

N.B.—The last words to be omitted if the ship is free from incumbrances.

In witness whereof (I or we) have hereto subscribed
(my or our) name and affixed (my or our) seal, at
this day of one thousand eight hundred and

Executed by the above named }
in the presence of }

Form C.

N.B.—In case of transfer it may be made by indorsement in the following form:

TRANSFER OF MORTGAGE.

(a). "I" or (a) the within mentioned in con-
"We." sideration of this day paid to
(b). "Me" or (b) by hereby transfer to
"Us." (c) the benefit of the
(c). "Him" or within written security.
"Them."

In witness whereof (d) have hereunto sub-
scribed (e) and affixed (f) this
day of one thousand eight
hundred and

Executed by the above named }
in the presence of }

N.B.—In case a mortgage is paid off, the following memorandum of its discharge may be used.

Received the sum of in discharge of the within
written security. Dated at this day of 18

Witness
of

Form D.

Declaration by Representative of taking by Trans-
mission* For †

* (or decease or marriage or bankruptcy).

† (Steamer or for sailing).

| Record No. | Date of Record | 18 |
|------------|----------------|----|
|------------|----------------|----|

Temporary name of ship

Where building

Proposed measurement, *length* *ft.*, *breadth*, *ft.*,
depth, *ft.*

Proposed tonnage, *tons*.

(I or we) the undersigned (*declarant's name, description and place of birth*), declare as follows I am (*or we are*)

(I or we) declare that the person appearing by the record book to be the (*owner or mortgagee*) of the ship above described (*cause of transmission*) in the county of (*county*) on the day of (*nature of cause of transmission*).

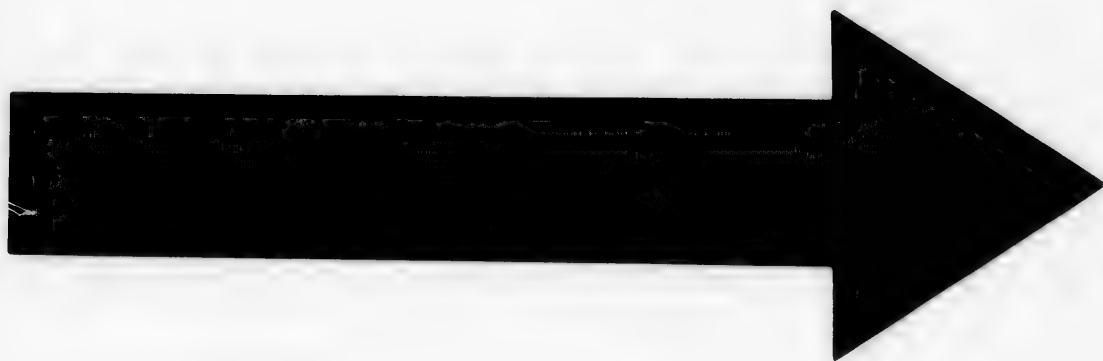
Made and subscribed the day)
of 18 by the above
named
in the presence of (*a*) }

(a) See secs. 39 and 48.

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AND

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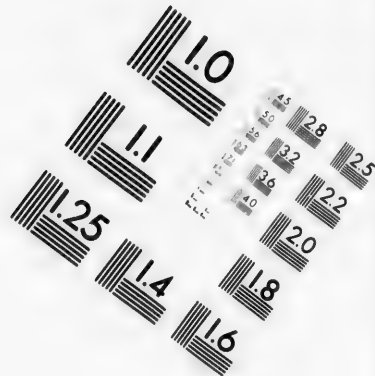
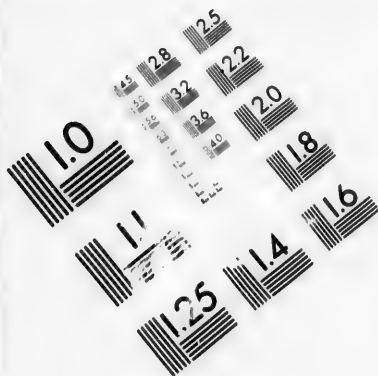
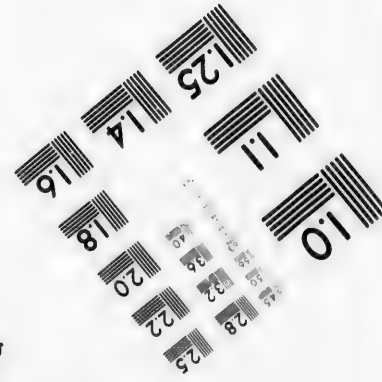
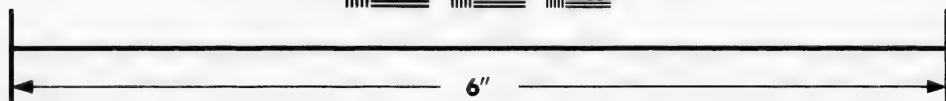
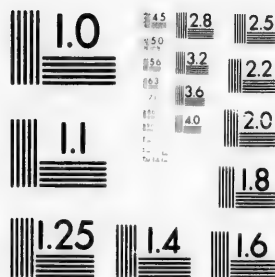
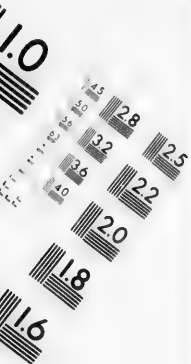


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